

- (1) enhance education and training;
- (2) improve interoperability and capabilities;
- (3) assist in the development of doctrine; and
- (4) validate concepts through experimentation.

(Added Pub. L. 110-417, [div. A], title XII, § 1232(a)(1), Oct. 14, 2008, 122 Stat. 4637; amended Pub. L. 112-239, div. A, title X, § 1076(f)(25), Jan. 2, 2013, 126 Stat. 1953.)

AMENDMENTS

2013—Subsec. (e)(1). Pub. L. 112-239 substituted “Not later than October 31 each year” for “Not later than October 31, 2009, and annually thereafter”.

EFFECTIVE DATE

Pub. L. 110-417, [div. A], title XII, § 1232(c), Oct. 14, 2008, 122 Stat. 4639, provided that: “The amendments made by this section [enacting this section] shall take effect on October 1, 2008”.

CHAPTER 139—RESEARCH AND DEVELOPMENT

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| Sec.
2351.
[2352.
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[2355 to 2357.
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[2359a.
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[2369 to 2370a.
2371.
2371a.
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2373.
2374. | Availability of appropriations.
Repealed.]
Contracts: acquisition, construction, or furnishing of test facilities and equipment.
Contracts: indemnification provisions.
[2355 to 2357. Repealed.]
Research and development projects.
Science and technology programs to be conducted so as to foster the transition of science and technology to higher levels of research, development, test, and evaluation.
Repealed.]
Defense Acquisition Challenge Program.
Research and development laboratories: contracts for services of university students.
Award of grants and contracts to colleges and universities: requirement of competition.
Research and educational programs and activities: historically black colleges and universities and minority-serving institutions of higher education.
Repealed.]
Coordination and communication of defense research activities and technology domain awareness.
Global Research Watch Program.
Major systems and munitions programs: survivability testing and lethality testing required before full-scale production.
Major defense acquisition programs: determination required before Milestone A approval.
Major defense acquisition programs: certification required before Milestone B approval.
Use of federally funded research and development centers.
Centers for Science, Technology, and Engineering Partnership.
Research projects: transactions other than contracts and grants.
Cooperative research and development agreements under Stevenson-Wydler Technology Innovation Act of 1980.
Authority of the Department of Defense to carry out certain prototype projects.
Independent research and development and bid and proposal costs: payments to contractors.
Procurement for experimental purposes.
Merit-based award of grants for research and development. |
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| Sec.
2374a.
[2374b. | Prizes for advanced technology achievements.
Repealed.] |
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AMENDMENTS

2015—Pub. L. 114-92, div. A, title II, §§ 211(b), 214(b), title VIII, §§ 815(a)(2), 823(b), title X, § 1078(c)(2), Nov. 25, 2015, 129 Stat. 767, 769, 896, 903, 999, added items 2368 and 2371b, substituted “Coordination and communication of defense research activities and technology domain awareness” for “Coordination and communication of defense research activities” in item 2364 and “Major defense acquisition programs: determination required before Milestone A approval” for “Major defense acquisition programs: certification required before Milestone A approval” in item 2366a, and struck out item 2352 “Defense Advanced Research Projects Agency: biennial strategic plan”.

2013—Pub. L. 112-239, div. A, title X, § 1076(g)(4), Jan. 2, 2013, 126 Stat. 1955, struck out item 2374b “Prizes for achievements in promoting science, mathematics, engineering, or technology education”.

2011—Pub. L. 112-81, div. A, title VIII, § 801(e)(3), Dec. 31, 2011, 125 Stat. 1484, substituted “Major defense acquisition programs: certification required before Milestone A approval” for “Major defense acquisition programs: certification required before Milestone A or Key Decision Point A approval” in item 2366a and “Major defense acquisition programs: certification required before Milestone B approval” for “Major defense acquisition programs: certification required before Milestone B or Key Decision Point B approval” in item 2366b.

Pub. L. 112-81, div. A, title II, § 251(a)(2), (b), Dec. 31, 2011, 125 Stat. 1347, effective Oct. 1, 2013, struck out item 2359a “Technology Transition Initiative”.

2009—Pub. L. 111-84, div. A, title II, § 252(b), Oct. 28, 2009, 123 Stat. 2243, added item 2362.

2008—Pub. L. 110-417, [div. A], title VIII, § 813(c), Oct. 14, 2008, 122 Stat. 4527, added items 2366a and 2366b and struck out former items 2366a “Major defense acquisition programs: certification required before Milestone B approval or Key Decision Point B approval” and 2366b “Major defense acquisition programs: certification required before Milestone A or Key Decision Point A approval”.

Pub. L. 110-181, div. A, title IX, § 943(a)(2), Jan. 28, 2008, 122 Stat. 289, added item 2366b.

2006—Pub. L. 109-163, div. A, title VIII, § 801(b), Jan. 6, 2006, 119 Stat. 3367, added item 2366a.

2004—Pub. L. 108-375, div. A, title X, § 1005(b), Oct. 28, 2004, 118 Stat. 2036, struck out item 2370a “Medical countermeasures against biowarfare threats: allocation of funding between near-term and other threats”.

2003—Pub. L. 108-136, div. A, title II, §§ 231(b), 232(b), Nov. 24, 2003, 117 Stat. 1422, 1423, added items 2352 and 2365.

2002—Pub. L. 107-314, div. A, title II, §§ 242(a)(2), 243(b), 248(c)(2), Dec. 2, 2002, 116 Stat. 2495, 2498, 2503, added items 2359a, 2359b, and 2374b.

2000—Pub. L. 106-398, § 1 [[div. A], title IX, § 904(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A-225, added item 2359.

1999—Pub. L. 106-65, div. A, title II, § 244(b), Oct. 5, 1999, 113 Stat. 552, added item 2374a.

1996—Pub. L. 104-201, div. A, title II, § 267(c)(1)(C), Sept. 23, 1996, 110 Stat. 2468, added item 2371a.

Pub. L. 104-106, div. A, title VIII, § 802(b), title X, §§ 1061(j)(2), 1062(c)(2), Feb. 10, 1996, 110 Stat. 390, 443, 444, struck out items 2352 “Contracts: notice to Congress required for contracts performed over period exceeding 10 years”, 2356 “Contracts: delegations”, and 2370 “Biological Defense Research Program”.

1994—Pub. L. 103-355, title I, § 1301(c), title II, § 2002(b), title III, § 3062(b), title VII, § 7203(a)(3), Oct. 13, 1994, 108 Stat. 3287, 3303, 3337, 3380, added item 2374, substituted in item 2358 “Research and development projects” for “Research projects” and in item 2371 “Research projects: transactions other than contracts and grants” for “Advanced research projects: cooperative agreements and other transactions”, and struck out item 2355 “Contracts: vouchering procedures” and item 2369 “Product evaluation activity”.

1993—Pub. L. 103-160, div. A, title II, §214(b), title VIII, §828(a)(2), (c)(2), Nov. 30, 1993, 107 Stat. 1586, 1713, 1714, struck out item 2362 “Testing requirements: wheeled or tracked armored vehicles” and added items 2370a and 2373.

1992—Pub. L. 102-484, div. A, title VIII, §821(c)(2), div. D, title XLII, §4271(b)(3), Oct. 23, 1992, 106 Stat. 2460, 2696, struck out items 2363 “Encouragement of technology transfer” and 2365 “Competitive prototype strategy requirement: major defense acquisition programs”.

1991—Pub. L. 102-190, div. A, title VIII, §§802(a)(2), 803(a)(2), 821(c)(2), Dec. 5, 1991, 105 Stat. 1414, 1415, 1431, substituted item 2352 for former item 2352 “Contracts: limited to five-year terms”, struck out item 2368 “Critical technologies research”, and substituted item 2372 for former item 2372 “Independent research and development”.

Pub. L. 102-25, title VII, §701(e)(5), Apr. 6, 1991, 105 Stat. 114, inserted period at end of item 2366.

1990—Pub. L. 101-510, div. A, title II, §241(b), title VIII, §824(a)(2), title XIII, §1331(5), Nov. 5, 1990, 104 Stat. 1517, 1604, 1673, struck out items 2357 “Contracts: reports to Congress” and 2359 “Salaries of officers of Federal contract research centers: reports to Congress” and added items 2370 and 2372.

1989—Pub. L. 101-189, div. A, title II, §251(a)(2), title VIII, §§802(c)(4)(B), 841(c)(2), Nov. 29, 1989, 103 Stat. 1404, 1486, 1514, substituted “testing and lethality testing required before full-scale production” for “and lethality testing; operational testing” in item 2366, substituted “research” for “plan” in item 2368, and added item 2371.

1988—Pub. L. 100-456, div. A, title II, §220(b), title VIII, §§823(a)(2), 842(b), Sept. 29, 1988, 102 Stat. 1941, 2018, 2026, added items 2361, 2368, and 2369.

Pub. L. 100-370, §1(g)(4), July 19, 1988, 102 Stat. 847, added item 2351, and struck out item 2361 “Availability of appropriations”.

1987—Pub. L. 100-180, div. A, title XII, §1231(10)(C), (12), Dec. 4, 1987, 101 Stat. 1160, substituted “defense” for “Defense” in item 2364 and “federally” for “Federally” in item 2367.

Pub. L. 100-26, §5(3)(B), Apr. 21, 1987, 101 Stat. 274, made technical amendment to directory language of section 909(a)(2) of Pub. L. 99-500, Pub. L. 99-591, and 99-661. See 1986 Amendment note below.

Pub. L. 100-26, §3(1)(B), Apr. 21, 1987, 101 Stat. 273, made technical amendment to directory language of section 234(c)(2) of Pub. L. 99-661. See 1986 Amendment note below.

1986—Pub. L. 99-661, div. A, title II, §234(c)(2), Nov. 14, 1986, 100 Stat. 3849, as amended by Pub. L. 100-26, §3(1)(B), Apr. 21, 1987, 101 Stat. 273, added item 2364.

Pub. L. 99-500, §101(c) [title X, §§909(a)(2), 910(a)(2), 912(a)(2)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-143, 1783-144, 1783-146, and Pub. L. 99-591, §101(c) [title X, §§909(a)(2), 910(a)(2), 912(a)(2)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-143, 3341-144, 3341-146; Pub. L. 99-661, div. A, title IX, formerly title IV, §§909(a)(2), 910(a)(2), 912(a)(2), Nov. 14, 1986, 100 Stat. 3849, 3922, 3924, 3926, renumbered title IX, Pub. L. 100-26, §3(5), Apr. 21, 1987, 101 Stat. 273; as amended by Pub. L. 100-26, §5(3)(B), Apr. 21, 1987, 101 Stat. 274, amended analysis identically, adding items 2365, 2366, and 2367.

1985—Pub. L. 99-145, title I, §123(a)(2), title XIV, §1457(b), Nov. 8, 1985, 99 Stat. 601, 763, added items 2362 and 2363.

1982—Pub. L. 97-258, §2(b)(3)(A), Sept. 13, 1982, 96 Stat. 1052, added item 2361.

1981—Pub. L. 97-86, title VI, §603(b), Dec. 1, 1981, 95 Stat. 1110, added item 2360.

1979—Pub. L. 96-107, title VIII, 819(a)(2), Nov. 9, 1979, 93 Stat. 819, added item 2359.

1962—Pub. L. 87-651, title II, §208(b), Sept. 7, 1962, 76 Stat. 523, added item 2358.

1958—Pub. L. 85-599, §3(d), Aug. 6, 1958, 72 Stat. 516, struck out item 2351 “Policy, plans, and coordination”.

§ 2351. Availability of appropriations

(a) Funds appropriated to the Department of Defense for research and development remain

available for obligation for a period of two consecutive years.

(b) Funds appropriated to the Department of Defense for research and development may be used—

(1) for the purposes of section 2353 of this title; and

(2) for purposes related to research and development for which expenditures are specifically authorized in other appropriations of the Department of Defense.

(Added Pub. L. 97-258, §2(b)(3)(B), Sept. 13, 1982, 96 Stat. 1052, §2361; renumbered §2351 and amended Pub. L. 100-370, §1(g)(1), July 19, 1988, 102 Stat. 846.)

HISTORICAL AND REVISION NOTES 1982 ACT

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
2361	31:649c(2).	Aug. 10, 1956, ch. 1041, §40(2), 70A Stat. 636; Nov. 17, 1971, Pub. L. 92-156, §201(b), 85 Stat. 424.

The words “Unless otherwise provided in the appropriation Act concerned” are omitted as unnecessary and for consistency. The word “Funds” is substituted for “moneys” for consistency in title 10.

1988 ACT

Subsection (a) is based on section 2361 of this title.

Subsection (b) is based on Pub. L. 99-190, §101(b) [title VIII, §8015], Dec. 19, 1985, 99 Stat. 1185, 1205.

PRIOR PROVISIONS

A prior section 2351, act Aug. 10, 1956, ch. 1041, 70A Stat. 133, related to policy, plans, and coordination relative to research and development on scientific problems relating to the national security, prior to repeal by Pub. L. 85-599, §3(d).

AMENDMENTS

1988—Pub. L. 100-370 renumbered section 2361 of this title as this section, designated such provisions as subsec. (a), and added subsec. (b).

[§ 2352. Repealed. Pub. L. 114-92, div. A, title X, § 1078(c)(1), Nov. 25, 2015, 129 Stat. 999]

Section, added Pub. L. 108-136, div. A, title II, §232(a), Nov. 24, 2003, 117 Stat. 1422; amended Pub. L. 113-66, div. A, title II, §211(a), (b), Dec. 26, 2013, 127 Stat. 703, related to the biennial strategic plan of the Defense Advanced Research Projects Agency.

A prior section 2352, acts Aug. 10, 1956, ch. 1041, 70A Stat. 133; Dec. 5, 1991, Pub. L. 102-190, div. A, title VIII, §803(a)(1), 105 Stat. 1414; Pub. L. 102-484, div. A, title X, §1053(4), Oct. 23, 1992, 106 Stat. 2501, required Secretary of military department to give notice to Congress of contracts performed over a period exceeding 10 years, prior to repeal by Pub. L. 104-106, div. A, title X, §1062(c)(1), Feb. 10, 1996, 110 Stat. 444.

§ 2353. Contracts: acquisition, construction, or furnishing of test facilities and equipment

(a) A contract of a military department for research or development, or both, may provide for the acquisition or construction by, or furnishing to, the contractor, of research, developmental, or test facilities and equipment that the Secretary of the military department concerned determines to be necessary for the performance of the contract. The facilities and equipment, and

specialized housing for them, may be acquired or constructed at the expense of the United States, and may be lent or leased to the contractor with or without reimbursement, or may be sold to him at fair value. This subsection does not authorize new construction or improvements having general utility.

(b) Facilities that would not be readily removable or separable without unreasonable expense or unreasonable loss of value may not be installed or constructed under this section on property not owned by the United States, unless the contract contains—

(1) a provision for reimbursing the United States for the fair value of the facilities at the completion or termination of the contract or within a reasonable time thereafter;

(2) an option in the United States to acquire the underlying land; or

(3) an alternative provision that the Secretary concerned considers to be adequate to protect the interests of the United States in the facilities.

(c) Proceeds of sales or reimbursements under this section shall be paid into the Treasury as miscellaneous receipts, except to the extent otherwise authorized by law with respect to property acquired by the contractor.

(Aug. 10, 1956, ch. 1041, 70A Stat. 134.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2353(a)	5:235e (1st sentence; and 2d sentence, less 2d and last provisos). 5:475j (1st sentence; and 2d sentence, less 2d and last provisos). 5:628e (1st sentence; and 2d sentence, less 2d and last provisos).	July 16, 1952, ch. 882, § 4 (less 3d and last sentences), 66 Stat. 725.
2353(b)	5:235e (2d proviso of 2d sentence). 5:475j (2d proviso of 2d sentence). 5:628e (2d proviso of 2d sentence).	
2353(c)	5:235e (last proviso of 2d sentence). 5:475j (last proviso of 2d sentence). 5:628e (last proviso of 2d sentence).	

In subsection (a), the words “furnished to” and “for the use thereof” are omitted as surplusage.

In subsections (a) and (b), the words “United States” are substituted for the word “Government”.

In subsection (b), the introductory clause is substituted for 5:235e (words of 2d proviso before clause (1)), 475j, and 628e. The words “that * * * considers” are substituted for the words “as will in the opinion”. The words “an alternative” are substituted for the words “such other”.

In subsection (c), the words “Proceeds of” are substituted for the words “That all moneys arising from”.

LIMITATIONS ON MODIFICATIONS OF CERTAIN GOVERNMENT-FURNISHED EQUIPMENT; ONE-TIME AUTHORITY TO TRANSFER A CERTAIN MILITARY PROTOTYPE

Pub. L. 111-84, div. A, title X, §1043, Oct. 28, 2009, 123 Stat. 2456, as amended by Pub. L. 111-383, div. A, title X, §1075(d)(12), Jan. 7, 2011, 124 Stat. 4373, provided that:

“(a) LIMITATION.—An article of military equipment that is an end item of a major weapon system may not be furnished or transferred to a private entity for the conduct of research, development, test and evaluation under contractual agreement with the Department of

Defense, if such research, development, test, and evaluation necessitates significantly modifying the military equipment, until the senior acquisition official of a military department, or his designee, submits to the congressional defense committees certification in writing—

“(1) that the modification of such article of military equipment is necessary to execute the contractual scope of work and there is no suitable alternative to modifying such article;

“(2) that the research, development, test, and evaluation effort is of sufficient interest to the military department to warrant the modification of such article of military equipment;

“(3) that—

“(A) prior to the end of the period of performance of such a contractual agreement, the article of military equipment will be restored to its original condition; or

“(B) it is not necessary to restore the article of military equipment to its original condition because the military department intends to dispose of the equipment or operate the equipment in its modified form.

“(4) that the private entity has sufficient resources and capability to fully perform the contractual research, development, test, and evaluation; and

“(5) that the military department has—

“(A) identified the scope of future test and evaluation likely to be required prior to transition of the associated technology to a program of record; and

“(B) a plan for the conduct of such future test and evaluation, including the anticipated roles and responsibilities of government and the private entity, as applicable.

“(b) CERTIFICATION.—No military equipment that is an end item of a major weapons system may be transferred or furnished to a private entity for purposes of research and development as authorized under subsection (a) unless the senior officer of the military service concerned certifies to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] that such equipment is not essential to the defense of the United States.

“(c) ONE-TIME AUTHORITY TO TRANSFER.—The Secretary of the Navy may transfer, to Piasecki Aircraft Corporation of Essington, Pennsylvania (in this section referred to as ‘transferee’), all right, title, and interest of the United States, except as otherwise provided in this subsection, in and to Navy aircraft N40VT (Bureau Number 163283), also known as the X-49A aircraft, and associated components and test equipment, previously specified as Government-furnished equipment in contract N00019-00-C-0284. The transferee shall provide consideration for the transfer of such military equipment to the transferor of an amount not to exceed fair value, as determined, on a non-delegable basis, by the Secretary.

“(d) APPLICABLE LAW.—The transfer or use of military equipment is subject to all applicable Federal and State laws and regulations, including, but not limited to, the Arms Export Control Act [22 U.S.C. 2751 et seq.], the Export Administration Act of 1979 [50 U.S.C. 4601 et seq.], continued under Executive Order 12924 [listed in a table under 50 U.S.C. 1701], International Traffic in Arms Regulations (22 C.F.R. 120 et seq.), Export Administration Regulations (15 C.F.R. 730 et seq.), Foreign Assets Control Regulations (31 C.F.R. 500 et seq.), and the Espionage Act [act June 15, 1917, ch. 30, 40 Stat. 217, see Tables for classification].

“(e) CONDITION OF EQUIPMENT TO BE TRANSFERRED.—

“(1) AS-IS CONDITION.—The military equipment transferred under subsection (c) shall be transferred in its current ‘as-is’ condition. The Secretary is not required to repair or alter the condition of any military equipment before transferring any interest in such equipment under subsection (c).

“(2) SPARE PARTS OR EQUIPMENT.—The Secretary of the Navy is not required to provide spare parts or

equipment as a result of the transfer authorized under subsection (c).

“(f) TRANSFER AT NO COST TO THE UNITED STATES.—The transfer of military equipment under subsection (c) shall be made at no cost to the United States. Any costs associated with the transfer shall be borne by the transferee.

“(g) ADDITIONAL TERMS AND CONDITIONS.—The Secretary shall require that the transfer authorized by section (c) be carried out by means of a written agreement and shall require, at a minimum, the following conditions to the transfer:

“(1) A condition stipulating that the transfer of the X-49A aircraft is for the sole purpose of further development, test, and evaluation of vectored thrust ducted propeller (hereinafter in this section referred to as ‘VTDP’) technology.

“(2) A condition providing the Government the right to procure the VTDP technology demonstrated under this program at a discounted cost based on the value of the X-49A aircraft and associated equipment at the time of transfer, with such valuation and terms determined by the Secretary.

“(3) A condition that the transferee not transfer any interest in, or transfer possession of, the military equipment transferred under subsection (b) to any other party without the prior written approval of the Secretary.

“(4) A condition that if the Secretary determines at any time that the transferee has failed to comply with a condition set forth in paragraphs (1) through (3), all items referred to in subsection (b) shall be transferred back to the Navy, at no cost to the United States.

“(5) A condition that the transferee acknowledges sole responsibility of the X-49A aircraft and associated equipment and assumes all liability for operation of the X-49A aircraft and associated equipment.

“(h) NO LIABILITY FOR THE UNITED STATES.—Upon the transfer of military equipment under subsection (b), the United States shall not be liable for any death, injury, loss, or damage that results from the use of such military equipment by any person other than the United States.

“(i) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with a transfer under subsection (b) as the Secretary considers appropriate to protect the interests of the United States.

“(j) DEFINITIONS.—In this subsection:

“(1) The term ‘major system’ has the meaning provided in section 2302 of title 10, United States Code.

“(2) The term ‘contractual agreement’ includes contracts, grants, cooperative agreements, and other transactions.”

USE OF RESEARCH AND DEVELOPMENT FUNDS FOR TEST FACILITIES AND EQUIPMENT

Pub. L. 99-190, § 101(b) [title VIII, § 8015], Dec. 19, 1985, 99 Stat. 1185, 1205, which provided that appropriations available to the Department of Defense for research and development could be used for 10 U.S.C. 2353 and for purposes related to research and development for which expenditures are specifically authorized in other appropriations of the Service concerned, was repealed and re-stated in section 2351(b) of this title by Pub. L. 100-370, § 1(g)(1)(B), (2), July 19, 1988, 102 Stat. 846.

§ 2354. Contracts: indemnification provisions

(a) With the approval of the Secretary of the military department concerned, any contract of a military department for research or development, or both, may provide that the United States will indemnify the contractor against either or both of the following, but only to the extent that they arise out of the direct performance of the contract and to the extent not compensated by insurance or otherwise:

(1) Claims (including reasonable expenses of litigation or settlement) by third persons, including employees of the contractor, for death, bodily injury, or loss of or damage to property, from a risk that the contract defines as unusually hazardous.

(2) Loss of or damage to property of the contractor from a risk that the contract defines as unusually hazardous.

(b) A contract, made under subsection (a), that provides for indemnification must also provide for—

(1) notice to the United States of any claim or suit against the contractor for the death, bodily injury, or loss of or damage to property; and

(2) control of or assistance in the defense by the United States, at its election, of that suit or claim.

(c) No payment may be made under subsection (a) unless the Secretary of the department concerned, or an officer or official of his department designated by him, certifies that the amount is just and reasonable.

(d) Upon approval by the Secretary concerned, payments under subsection (a) may be made from—

(1) funds obligated for the performance of the contract concerned;

(2) funds available for research or development, or both, and not otherwise obligated; or

(3) funds appropriated for those payments.

(Aug. 10, 1956, ch. 1041, 70A Stat. 134.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
2354(a)	5:235f (1st sentence, less provisos). 5:475k (1st sentence, less provisos). 5:628f (1st sentence, less provisos).	July 16, 1952, ch. 882, § 5, 66 Stat. 726.
2354(b)	5:235f (1st proviso of 1st sentence). 5:475k (1st proviso of 1st sentence). 5:628f (1st proviso of 1st sentence).	
2354(c)	5:235f (last proviso of 1st sentence). 5:475k (last proviso of 1st sentence). 5:628f (last proviso of 1st sentence).	
2354(d)	5:235f (less 1st sentence). 5:475k (less 1st sentence). 5:628f (less 1st sentence).	

In subsection (a), the words “Liability on account of”, and “of such claims” are omitted as surplusage. In clauses (1) and (2), the word “from” is substituted for the words “arising as a result of”.

In subsections (a) and (b), the words “United States” are substituted for the word “Government”.

In subsection (b), the words “made under subsection (a), that provides for indemnification” are substituted for the words “so providing * * * with respect to any alleged liability for such death”. The words “appropriate” and “or actions filed * * * or made” are omitted as surplusage.

In subsection (c), the words “by the Government”, “authority of”, and “for such purpose” are omitted as surplusage.

In subsection (d), the words “by the Congress” and “the making of” are omitted as surplusage. The words “or both” are inserted to conform to subsection (a).

[§ 2355. Repealed. Pub. L. 103-355, title II, § 2002(a), Oct. 13, 1994, 108 Stat. 3303]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 135, authorized Secretary of each military department to prescribe by regulation the extent of itemization, substantiation, or certification of vouchers for funds spent under research or development contracts prior to payment.

[§ 2356. Repealed. Pub. L. 104-106, div. A, title VIII, § 802(a), Feb. 10, 1996, 110 Stat. 390]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 135; Sept. 2, 1958, Pub. L. 85-861, §1(43A), 72 Stat. 1457; July 18, 1984, Pub. L. 98-369, div. B, title VII, §2727(d), 98 Stat. 1195; Dec. 4, 1987, Pub. L. 100-180, div. A, title XII, §1231(18)(B), 101 Stat. 1161, related to delegations of authority under sections 1584, 2353, 2354, and 2355 of this title.

[§ 2357. Repealed. Pub. L. 101-510, div. A, title XIII, § 1301(11), Nov. 5, 1990, 104 Stat. 1668]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 135, required Secretary of each military department to report to Congress on contracts for research and development.

§ 2358. Research and development projects

(a) **AUTHORITY.**—The Secretary of Defense or the Secretary of a military department may engage in basic research, applied research, advanced research, and development projects that—

(1) are necessary to the responsibilities of such Secretary's department in the field of research and development; and

(2) either—

(A) relate to weapon systems and other military needs; or

(B) are of potential interest to the Department of Defense.

(b) **AUTHORIZED MEANS.**—The Secretary of Defense or the Secretary of a military department may perform research and development projects—

(1) by contract, cooperative agreement, or grant, in accordance with chapter 63 of title 31;

(2) through one or more military departments;

(3) by using employees and consultants of the Department of Defense; or

(4) by mutual agreement with the head of any other department or agency of the Federal Government.

(c) **REQUIREMENT OF POTENTIAL DEPARTMENT OF DEFENSE INTEREST.**—Funds appropriated to the Department of Defense or to a military department may not be used to finance any research project or study unless the project or study is, in the opinion of the Secretary of Defense or the Secretary of that military department, respectively, of potential interest to the Department of Defense or to such military department, respectively.

(d) **ADDITIONAL PROVISIONS APPLICABLE TO COOPERATIVE AGREEMENTS.**—Additional authorities, conditions, and requirements relating to certain cooperative agreements authorized by this section are provided in sections 2371 and 2371a of this title.

(Added Pub. L. 87-651, title II, §208(a), Sept. 7, 1962, 76 Stat. 523; amended Pub. L. 97-86, title IX,

§910, Dec. 1, 1981, 95 Stat. 1120; Pub. L. 100-370, §1(g)(3), July 19, 1988, 102 Stat. 846; Pub. L. 103-160, div. A, title VIII, §827(a), Nov. 30, 1993, 107 Stat. 1712; Pub. L. 103-355, title I, §1301(a), Oct. 13, 1994, 108 Stat. 3284; Pub. L. 104-201, div. A, title II, §267(c)(2), Sept. 23, 1996, 110 Stat. 2468.)

HISTORICAL AND REVISION NOTES

1962 ACT

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
2358	5:171c(b)(2), (3).	July 26, 1947, ch. 343, §203(b)(2), (3); added Aug. 6, 1958, Pub. L. 85-599, §9(a) (3d and 4th pars.), 72 Stat. 520.

5 U.S.C. 171c(b)(3) is omitted as unnecessary since the authorization for appropriations is implied in 5 U.S.C. 171c(b)(2).

1988 ACT

In the existing text of 10 U.S.C. 2358, the bill would in two instances strike the phrase “or his designee” appearing after “Secretary of Defense” (section 1(g)(3)). The change is made for consistency in the Code, and no substantive change is intended. The committee notes that the Secretary of Defense has general authority to delegate functions under 10 U.S.C. 113(d).

Subsection (b) is based on Pub. L. 91-441, title II, §204, Oct. 7, 1970, 84 Stat. 908.

AMENDMENTS

1996—Subsec. (d). Pub. L. 104-201 substituted “sections 2371 and 2371a” for “section 2371”.

1994—Pub. L. 103-355 amended section generally, inserting reference to development projects in section catchline, and in text specifying that relevant Secretary may perform research and development projects in accordance with chapter 63 of title 31, and adding subsec. (d) relating to additional provisions applicable to cooperative agreements.

1993—Pub. L. 103-160 amended section generally. Prior to amendment, section read as follows:

“(a) **IN GENERAL.**—Subject to approval by the President, the Secretary of Defense may engage in basic and applied research projects that are necessary to the responsibilities of the Department of Defense in the field of basic and applied research and development and that relate to weapons systems and other military needs. Subject to approval by the President, the Secretary may perform assigned research and development projects—

“(1) by contract with, or by grant to, educational or research institutions, private businesses, or other agencies of the United States;

“(2) through one or more of the military departments; or

“(3) by using employees and consultants of the Department of Defense.

“(b) **REQUIREMENT OF POTENTIAL MILITARY RELATIONSHIP.**—Funds appropriated to the Department of Defense may not be used to finance any research project or study unless the project or study has, in the opinion of the Secretary of Defense, a potential relationship to a military function or operation.”

1988—Pub. L. 100-370 designated existing provisions as subsec. (a), inserted heading, struck out “or his designee” after “Secretary of Defense” and “President, the Secretary”, and added subsec. (b).

1981—Par. (1). Pub. L. 97-86 substituted “by contract with, or by grant to,” for “by contract with”.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103-355, see section 10001 of Pub. L. 103-355, set out as a note under section 2302 of this title.

PLAN FOR ADVANCED WEAPONS TECHNOLOGY WAR
GAMES

Pub. L. 114-92, div. A, title II, §240, Nov. 25, 2015, 129 Stat. 784, provided that:

“(a) PLAN REQUIRED.—The Secretary of Defense, in coordination with the Chairman of the Joint Chiefs of Staff, shall develop and implement a plan for integrating advanced weapons and offset technologies into exercises carried out individually and jointly by the military departments to improve the development and experimentation of various concepts for employment by the Armed Forces.

“(b) ELEMENTS.—The plan under subsection (a) shall include the following:

“(1) Identification of specific exercises to be carried out individually or jointly by the military departments under the plan.

“(2) Identification of emerging advanced weapons and offset technologies based on joint and individual recommendations of the military departments, including with respect to directed-energy weapons, hypersonic strike systems, autonomous systems, or other technologies as determined by the Secretary.

“(3) A schedule for integrating either prototype capabilities or table-top exercises into relevant exercises.

“(4) A method for capturing lessons learned and providing feedback both to the developers of the advanced weapons and offset technology and the military departments.

“(c) SUBMISSION.—Not later than one year after the date of the enactment of this Act [Nov. 25, 2015], the Secretary shall submit to the Committees on Armed Services of the House of Representatives and the Senate a report containing the plan under subsection (a) and a status update on the implementation of such plan.”

INFORMATION OPERATIONS AND ENGAGEMENT
TECHNOLOGY DEMONSTRATIONS

Pub. L. 114-92, div. A, title X, §1056, Nov. 25, 2015, 129 Stat. 984, provided that:

“(a) SENSE OF CONGRESS.—It is the sense of Congress that—

“(1) military information support operations are a critical component of the efforts of the Department of Defense to provide commanders with capabilities to shape the operational environment;

“(2) military information support operations are integral to armed conflict and therefore the Secretary of Defense has broad latitude to conduct military information support operations;

“(3) the Secretary of Defense should develop creative and agile concepts, technologies, and strategies across all available media to most effectively reach target audiences, to counter and degrade the ability of adversaries and potential adversaries to persuade, inspire, and recruit inside areas of hostilities or in other areas in direct support of the objectives of commanders; and

“(4) the Secretary of Defense should request additional funds in future budgets to carry out military information support operations to support the broader efforts of the Government to counter violent extremism.

“(b) TECHNOLOGY DEMONSTRATIONS REQUIRED.—To support the ability of the Department of Defense to provide innovative operational concepts and technologies to shape the informational environment, the Secretary of Defense shall carry out a series of technology demonstrations, subject to the availability of funds for such purpose or to a prior approval reprogramming, to assess innovative new technologies for information operations and information engagement to support the operational and strategic requirements of the commanders of the geographic and functional combatant commands, including the urgent and emergent operational needs and the operational and theater campaign plans of such combatant commanders

to further the national security objectives and strategic communications requirements of the United States.

“(c) PLAN.—By not later than 180 days after the date of the enactment of this Act [Nov. 25, 2015], the Secretary of Defense shall provide to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a plan describing how the Department of Defense will execute the technology demonstrations required under subsection (b). Such plan shall include each of the following elements:

“(1) A general timeline for conducting the technology demonstrations.

“(2) Clearly defined goals and endstate objectives for the demonstrations, including traceability of such goals to the tactical, operational, or strategic requirements of the combatant commanders.

“(3) A process for measuring the performance and effectiveness of the demonstrations.

“(4) A coordination structure to include participation between the technology development and the operational communities, including potentially joint, interagency, intergovernmental, and multinational partners.

“(5) The identification of potential technologies to support the tactical, operational, or strategic needs of the combatant commanders.

“(6) An explanation of how such technologies will support and coordinate with elements of joint, interagency, intergovernmental, and multinational partners.

“(d) CONGRESSIONAL NOTICE.—Upon initiating a technology demonstration under subsection (b), the Secretary of Defense shall submit to the congressional defense committees written notice of the demonstration that includes a detailed description of the demonstration, including its purpose, cost, engagement medium, targeted audience, and any other details the Secretary of Defense believes will assist the committees in evaluating the demonstration.

“(e) TERMINATION.—The authority to carry out a technology demonstration under this section shall terminate on September 30, 2022.

“(f) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to limit or alter any authority under which the Department of Defense supports information operations activities within the Department.”

PILOT PROGRAM ON DYNAMIC SHAPING OF THE WORK-
FORCE TO IMPROVE THE TECHNICAL SKILLS AND EX-
PERTISE AT CERTAIN DEPARTMENT OF DEFENSE LAB-
ORATORIES

Pub. L. 114-92, div. A, title XI, §1109, Nov. 25, 2015, 129 Stat. 1028, provided that:

“(a) PILOT PROGRAM REQUIRED.—The Secretary of Defense shall establish a pilot program to utilize the authorities specified in subsection (b) at the Department of Defense laboratories specified in subsection (c) to provide the directors of such laboratories the authority to dynamically shape the mix of technical skills and expertise in the workforces of such laboratories in order to achieve one or more of the following:

“(1) To meet organizational and Department-designated missions in the most cost-effective and efficient manner.

“(2) To upgrade and enhance the scientific quality of the workforces of such laboratories.

“(3) To shape such workforces to better respond to such missions.

“(4) To reduce the average unit cost of such workforces.

“(b) WORKFORCE SHAPING AUTHORITIES.—The authorities that shall be available for use by the director of a Department of Defense laboratory under the pilot program are the following:

“(1) FLEXIBLE LENGTH AND RENEWABLE TERM TECHNICAL APPOINTMENTS.—

“(A) IN GENERAL.—Subject to the provisions of this paragraph, authority otherwise available to the director by law (and within the available budg-

etary resources of the laboratory) to appoint qualified scientific and technical personnel who are not currently Department of Defense civilian employees into any scientific or technical position in the laboratory for a period of more than one year but not more than six years.

“(B) BENEFITS.—Personnel appointed under this paragraph shall be provided with benefits comparable to those provided to similar employees at the laboratory concerned, including professional development opportunities, eligibility for all laboratory awards programs, and designation as ‘status applicants’ for the purposes of eligibility for positions in the Federal service.

“(C) EXTENSION OF APPOINTMENTS.—The appointment of any individual under this paragraph may be extended without limit in up to six year increments at any time during any term of service under such conditions as the director concerned shall establish for purposes of this paragraph.

“(D) CONSTRUCTION WITH CERTAIN LIMITATION.—For purposes of determining the workforce size of a laboratory in connection with compliance with section 955 of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112-239; 126 Stat. 1896; 10 U.S.C. 129a note), any individual serving in an appointment under this paragraph shall be treated as a fractional employee of the laboratory, which fraction is—

“(i) the current term of appointment of the individual under this paragraph; divided by

“(ii) the average length of tenure of a career employee at the laboratory, as calculated at the end of the last fiscal year ending before the date of the most recent appointment or extension of the individual under this paragraph.

“(2) REEMPLOYMENT OF ANNUITANTS.—Authorities to authorize the director of any science and technology reinvention laboratory (in this section referred to as ‘STRL’) to reemploy annuitants in accordance with section 9902(g) of title 5, United States Code, except that as a condition for reemployment the director may authorize the deduction from the pay of any annuitant so reemployed of an amount up to the amount of the annuity otherwise payable to such annuitant allocable to the period of actual employment of such annuitant, which amount shall be determined in a manner specified by the director for purposes of this paragraph to ensure the most cost effective execution of designated missions by the laboratory while retaining critical technical skills.

“(3) EARLY RETIREMENT INCENTIVES.—Authorities to authorize the director of any STRL to authorize voluntary early retirement of employees in accordance with section 8336 of title 5, United States Code, without regard to section 8336(d)(2)(D) or 3522 of such title, and with employees so separated voluntarily from service.

“(4) SEPARATION INCENTIVE PAY.—Authorities to authorize the director of any STRL to pay voluntary separation pay to employees in accordance with section 8414(b)(1)(B) of title 5, United States Code, without regard to clause (iv) or (v) of such section or section 3522 of such title, and with—

“(A) employees so separated voluntarily from service under regulations prescribed by the Secretary of Defense for purposes of the pilot program; and

“(B) payments to employees so separated authorized under section 3523 of such title without regard to—

“(i) the plan otherwise required by section 3522 of such title; and

“(ii) paragraph (1) or (3) of section 3523(b) of such title.

“(c) LABORATORIES.—The Department of Defense laboratories specified in this subsection are the laboratories specified in section 1105(a) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84; 123 Stat. 2486; 10 U.S.C. 2358 note).

“(d) EXPIRATION.—

“(1) IN GENERAL.—The authority in this section shall expire on December 31, 2023.

“(2) CONTINUATION OF AUTHORITIES EXERCISED BEFORE TERMINATION.—The expiration in paragraph (1) shall not be construed to effect the continuation after the date specified in paragraph (1) of any term of employment or other benefit authorized under this section before that date in accordance with the terms of such authorization.”

DEFENSE LABORATORY MODERNIZATION PILOT PROGRAM

Pub. L. 114-92, div. B, title XXVIII, §2803, Nov. 25, 2015, 129 Stat. 1169, provided that:

“(a) AUTHORITY TO USE RESEARCH, DEVELOPMENT, TEST, AND EVALUATION FUNDS.—Using amounts appropriated or otherwise made available to the Department of Defense for research, development, test, and evaluation, the Secretary of Defense may fund a military construction project described in subsection (d) at any of the following:

“(1) A Department of Defense Science and Technology Reinvention Laboratory (as designated by section 1105(a) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84; 10 U.S.C. 2358 note)[)].

“(2) A Department of Defense Federally Funded Research and Development Center that functions primarily as a research laboratory.

“(3) A Department of Defense facility in support of a technology development program that is consistent with the fielding of offset technologies as described in section 218 of this Act [set out as a note under section 2501 of this title].

“(b) CONDITION ON AND SCOPE OF PROJECT AUTHORITY.—Subject to the condition that a military construction project under this section be authorized in a Military Construction Authorization Act, the authority to carry out the military construction project includes authority for—

“(1) surveys, site preparation, and advanced planning and design;

“(2) acquisition, conversion, rehabilitation, and installation of facilities;

“(3) acquisition and installation of equipment and appurtenances integral to the project; acquisition and installation of supporting facilities (including utilities) and appurtenances incident to the project; and

“(4) planning, supervision, administration, and overhead expenses incident to the project.

“(c) CONGRESSIONAL NOTIFICATION REQUIREMENTS.—

“(1) SUBMISSION OF PROJECT REQUESTS.—The Secretary of Defense shall include military construction projects proposed to be carried out under this section in the budget justification documents for the Department of Defense submitted to Congress in connection with the budget for a fiscal year submitted under 1105 of title 31, United States Code.

“(2) NOTIFICATION OF IMPLEMENTATION.—Not less than 14 days prior to the first obligation of funds described in subsection (a) for a military construction project to be carried out under this section, the Secretary of Defense shall submit a notification to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] providing an updated construction description, cost, and schedule for the project and any other matters regarding the project as the Secretary considers appropriate.

“(d) AUTHORIZED PROJECTS DESCRIBED.—The authority provided by this section to fund military construction projects using amounts appropriated or otherwise made available for research, development, test, and evaluation is limited to military construction projects that the Secretary of Defense, in the budget justification documents exhibits submitted pursuant to subsection (c)(1), determines—

“(1) will support research and development activities at laboratories described in subsection (a);

“(2) will establish facilities that will have significant potential for use by entities outside the Department of Defense, including universities, industrial partners, and other Federal agencies;

“(3) are endorsed for funding by more than one military department or Defense Agency; and

“(4) cannot be fully funded within the thresholds specified in section 2805 of title 10, United States Code.

“(e) FUNDING LIMITATION.—The maximum amount of funds appropriated or otherwise made available for research, development, test, and evaluation that may be obligated in any fiscal year for military construction projects under this section is \$150,000,000.

“(f) TERMINATION OF AUTHORITY.—The authority provided by this section to fund military construction projects using funds appropriated or otherwise made available for research, development, test, and evaluation shall terminate on October 1, 2020.”

PILOT PROGRAM ON ASSIGNMENT TO DEFENSE ADVANCED RESEARCH PROJECTS AGENCY OF PRIVATE SECTOR PERSONNEL WITH CRITICAL RESEARCH AND DEVELOPMENT EXPERTISE

Pub. L. 113-291, div. A, title II, § 232, Dec. 19, 2014, 128 Stat. 3332, provided that:

“(a) PILOT PROGRAM AUTHORIZED.—In accordance with the provisions of this section, the Director of the Defense Advanced Research Projects Agency may carry out a pilot program to assess the feasibility and advisability of temporarily assigning covered individuals with significant technical expertise in research and development areas of critical importance to defense missions to the Defense Advanced Research Projects Agency to lead research or development projects of the Agency.

“(b) ASSIGNMENT OF COVERED INDIVIDUALS.—

“(1) NUMBER OF INDIVIDUALS ASSIGNED.—Under the pilot program, the Director may assign covered individuals to the Agency as described in subsection (a), but may not have more than five covered individuals so assigned at any given time.

“(2) PERIOD OF ASSIGNMENT.—

“(A) Except as provided in subparagraph (B), the Director may, under the pilot program, assign a covered individual described in subsection (a) to lead research and development projects of the Agency for a period of not more than two years.

“(B) The Director may extend the assignment of a covered individual for one additional period of not more than two years as the Director considers appropriate.

“(3) APPLICATION OF CERTAIN PROVISIONS OF LAW.—

“(A) Except as otherwise provided in this section, the Director shall carry out the pilot program in accordance with the provisions of subchapter VI of chapter 33 of title 5, United States Code, except that, for purposes of the pilot program, the term ‘other organization’, as used in such subchapter, shall be deemed to include a covered entity.

“(B) A covered individual employed by a covered entity who is assigned to the Agency under the pilot program is deemed to be an employee of the Department of Defense for purposes of the following provisions of law:

“(i) Chapter 73 of title 5, United States Code.

“(ii) Sections 201, 203, 205, 207, 208, 209, 603, 606, 607, 643, 654, 1905, and 1913 of title 18, United States Code.

“(iii) Sections 1343, 1344, and 1349(b) of title 31, United States Code.

“(iv) Chapter 171 of title 28, United States Code (commonly known as the ‘Federal Tort Claims Act’), and any other Federal tort liability statute.

“(v) The Ethics in Government Act of 1978 (5 U.S.C. App.).

“(vi) Section 1043 of the Internal Revenue Code of 1986 [26 U.S.C. 1043].

“(vii) Chapter 21 of title 41, United States Code.

“(4) PAY AND SUPERVISION.—A covered individual employed by a covered entity who is assigned to the Agency under the pilot program—

“(A) may continue to receive pay and benefits from such covered entity with or without reimbursement by the Agency;

“(B) is not entitled to pay from the Agency; and

“(C) shall be subject to supervision by the Director in all duties performed for the Agency under the pilot program.

“(c) CONFLICTS OF INTEREST.—

“(1) PRACTICES AND PROCEDURES REQUIRED.—The Director shall develop practices and procedures to manage conflicts of interest and the appearance of conflicts of interest that could arise through assignments under the pilot program.

“(2) ELEMENTS.—The practices and procedures required by paragraph (1) shall include, at a minimum, the requirement that each covered individual assigned to the Agency under the pilot program shall sign an agreement that provides for the following:

“(A) The nondisclosure of any trade secrets or other nonpublic or proprietary information which is of commercial value to the covered entity from which such covered individual is assigned.

“(B) The assignment of rights to intellectual property developed in the course of any research or development project under the pilot program—

“(i) to the Agency and its contracting partners in accordance with applicable provisions of law regarding intellectual property rights; and

“(ii) not to the covered individual or the covered entity from which such covered individual is assigned.

“(C) Such additional measures as the Director considers necessary to carry out the program in accordance with Federal law.

“(d) PROHIBITION ON CHARGES BY COVERED ENTITIES.—A covered entity may not charge the Federal Government, as direct or indirect costs under a Federal contract, the costs of pay or benefits paid by the covered entity to a covered individual assigned to the Agency under the pilot program.

“(e) ANNUAL REPORT.—Not later than the first October 31 after the first fiscal year in which the Director carries out the pilot program and each October 31 thereafter that immediately follows a fiscal year in which the Director carries out the pilot program, the Director shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the activities carried out under the pilot program during the most recently completed fiscal year.

“(f) TERMINATION OF AUTHORITY.—The authority provided in this section shall expire on September 30, 2025, except that any covered individual assigned to the Agency under the pilot program shall continue in such assignment until the terms of such assignment have been satisfied.

“(g) DEFINITIONS.—In this section:

“(1) The term ‘covered individual’ means any individual who is employed by a covered entity.

“(2) The term ‘covered entity’ means any non-Federal, nongovernmental entity that, as of the date on which a covered individual employed by the entity is assigned to the Agency under the pilot program, is a nontraditional defense contractor (as defined in section 2302 of title 10, United States Code).”

TEMPORARY AUTHORITIES FOR CERTAIN POSITIONS AT DEPARTMENT OF DEFENSE RESEARCH AND ENGINEERING FACILITIES

Pub. L. 113-66, div. A, title XI, § 1107, Dec. 26, 2013, 127 Stat. 887, as amended by Pub. L. 113-291, div. A, title XI, § 1105, Dec. 19, 2014, 128 Stat. 3526; Pub. L. 114-92, div. A, title XI, § 1104, Nov. 25, 2015, 129 Stat. 1023, provided that:

“(a) AUTHORITY TO MAKE DIRECT APPOINTMENTS.—

“(1) CANDIDATES FOR SCIENTIFIC AND ENGINEERING POSITIONS AT SCIENCE AND TECHNOLOGY REINVENTION

LABORATORIES.—The director of any Science and Technology Reinvention Laboratory (hereinafter in this section referred to as an ‘STRL’) may appoint qualified candidates possessing a bachelor’s degree to positions described in paragraph (1) of subsection (b) as an employee in a laboratory described in that paragraph without regard to the provisions of subchapter I of chapter 33 of title 5, United States Code (other than sections 3303 and 3328 of such title).

“(2) VETERAN CANDIDATES FOR SIMILAR POSITIONS AT RESEARCH AND ENGINEERING FACILITIES.—The director of any STRL may appoint qualified veteran candidates to positions described in paragraph (2) of subsection (b) as an employee at a laboratory, agency, or organization specified in that paragraph without regard to the provisions of subchapter I of chapter 33 of title 5, United States Code.

“(3) STUDENTS ENROLLED IN SCIENTIFIC AND ENGINEERING PROGRAMS.—The director of any STRL may appoint qualified candidates enrolled in a program of undergraduate or graduate instruction leading to a bachelor’s or an advanced degree in a scientific, technical, engineering or mathematical course of study at an institution of higher education (as that term is defined in section [sic] 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001[, 1002])) to positions described in paragraph (3) of subsection (b) as an employee in a laboratory described in that paragraph without regard to the provisions of subchapter I of chapter 33 of title 5, United States Code (other than sections 3303 and 3328 of such title).

“(4) NONCOMPETITIVE CONVERSION TO PERMANENT APPOINTMENT.—With respect to any student appointed by the director of an STRL under paragraph (3) to a temporary or term appointment, upon graduation from the applicable institution of higher education (as defined in such paragraph), the director may non-competitively convert such student to a permanent appointment within the STRL without regard to the provisions of subchapter I of chapter 33 of title 5, United States Code (other than sections 3303 and 3328 of such title), provided the student meets all eligibility and Office of Personnel Management qualification requirements for the position.

“(b) COVERED POSITIONS.—

“(1) CANDIDATES FOR SCIENTIFIC AND ENGINEERING POSITIONS.—The positions described in this paragraph are scientific and engineering positions that may be temporary, term, or permanent in any laboratory designated by section 1105(a) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2486; 10 U.S.C. 2358 note) as a Department of Defense science and technology reinvention laboratory.

“(2) QUALIFIED VETERAN CANDIDATES.—The positions described in this paragraph are scientific, technical, engineering, and mathematics positions, including technicians, in the following:

“(A) Any laboratory referred to in paragraph (1).

“(B) Any other Department of Defense research and engineering agency or organization designated by the Secretary for purposes of subsection (a)(2).

“(3) CANDIDATES ENROLLED IN SCIENTIFIC AND ENGINEERING PROGRAMS.—The positions described in this paragraph are scientific and engineering positions that may be temporary or term in any laboratory designated by section 1105(a) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2486; 10 U.S.C. 2358 note) as a Department of Defense science and technology reinvention laboratory.

“(c) LIMITATION ON NUMBER OF APPOINTMENTS ALLOWABLE IN A CALENDAR YEAR.—The authority under subsection (a) may not, in any calendar year and with respect to any laboratory, agency, or organization described in subsection (b), be exercised with respect to a number of candidates greater than the following:

“(1) In the case of a laboratory described in subsection (b)(1), with respect to appointment authority under subsection (a)(1), the number equal to 6 percent

of the total number of scientific and engineering positions in such laboratory that are filled as of the close of the fiscal year last ending before the start of such calendar year.

“(2) In the case of a laboratory, agency, or organization described in subsection (b)(2), with respect to appointment authority under subsection (a)(2), the number equal to 3 percent of the total number of scientific, technical, engineering, mathematics, and technician positions in such laboratory, agency, or organization that are filled as of the close of the fiscal year last ending before the start of such calendar year.

“(3) In the case of a laboratory described in subsection (b)(3), with respect to appointment authority under subsection (a)(3), the number equal to 3 percent of the total number of scientific and engineering positions in such laboratory that are filled as of the close of the fiscal year last ending before the start of such calendar year.

“(d) DEFINITIONS.—In this section:

“(1) The term ‘employee’ has the meaning given that term in section 2105 of title 5, United States Code.

“(2) The term ‘veteran’ has the meaning given that term in section 101 of title 38, United States Code.

“(e) SUNSET.—Appointments under subsection (a) may not be made after December 31, 2019.

“(f) SENIOR SCIENTIFIC TECHNICAL MANAGERS.—

“(1) ESTABLISHMENT.—There is hereby established in each STRL a category of senior professional scientific and technical positions, the incumbents of which shall be designated as ‘senior scientific technical managers’ and which shall be positions classified above GS–15 of the General Schedule, notwithstanding section 5108(a) of title 5, United States Code. The primary functions of such positions shall be—

“(A) to engage in research and development in the physical, biological, medical, or engineering sciences, or another field closely related to the mission of such STRL; and

“(B) to carry out technical supervisory responsibilities.

“(2) APPOINTMENTS.—The positions described in paragraph (1) may be filled, and shall be managed, by the director of the STRL involved, under criteria established pursuant to section 342(b) of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 108 Stat. 2721) [set out below], relating to personnel demonstration projects at laboratories of the Department of Defense, except that the director of the laboratory involved shall determine the number of such positions at such laboratory, not to exceed 2 percent of the number of scientists and engineers employed at such laboratory as of the close of the last fiscal year before the fiscal year in which any appointments subject to that numerical limitation are made.

“(3) SUNSET.—Appointments under this subsection may not be made after December 31, 2019.

“(g) REPORTING REQUIREMENT.—The Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] an annual report on the operation of this section. Each such report shall include, for the period covered by such report—

“(1) the total number of individuals appointed under subsection (a)(1) during such period;

“(2) the total number of individuals appointed under subsection (a)(2) during such period; and

“(3) the total number of senior scientific technical managers at each STRL as of the end of such period.

“(h) EXCLUSION FROM PERSONNEL LIMITATIONS.—

“(1) IN GENERAL.—The director of an STRL shall manage the workforce strength, structure, positions, and compensation of such STRL—

“(A) without regard to any limitation on appointments, positions, or funding with respect to such STRL, subject to subparagraph (B); and

“(B) in a manner consistent with the budget available with respect to such STRL.

“(2) EXCEPTIONS.—Paragraph (1) shall not apply to Senior Executive Service positions (as defined in section 3132(a) of title 5, United States Code) or scientific and professional positions authorized under section 3104 of such title.”

REGIONAL ADVANCED TECHNOLOGY CLUSTERS

Pub. L. 112-239, div. A, title II, §252, Jan. 2, 2013, 126 Stat. 1688, provided that:

“(a) DEVELOPMENT OF INNOVATIVE ADVANCED TECHNOLOGIES.—The Secretary of Defense may use the research and engineering network of the Department of Defense, including the organic industrial base, to support regional advanced technology clusters established by the Secretary of Commerce to encourage the development of innovative advanced technologies to address national security and homeland defense challenges.

“(b) REPORT.—Not later than 180 days after the date of the enactment of this Act [Jan. 2, 2013], the Under Secretary of Defense for Acquisition, Technology, and Logistics shall submit to the appropriate congressional committees a report describing—

“(1) the participation of the Department of Defense in regional advanced technology clusters, including the number of—

“(A) clusters supported;

“(B) technologies developed and transitioned to acquisition programs;

“(C) products commercialized;

“(D) small businesses trained;

“(E) companies started; and

“(F) research and development facilities shared;

“(2) implementation by the Department of processes and tools to facilitate collaboration with the clusters;

“(3) agreements established by the Department with the Department of Commerce to jointly support the continued growth of the clusters;

“(4) methods to evaluate the effectiveness of technology cluster policies;

“(5) any additional required authorities and any impediments to supporting regional advanced technology clusters; and

“(6) the use of any agreements entered into under the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4701 et seq.) and any access granted to facilities of the Department of Defense for research and development purposes.

“(c) COLLABORATION.—The Secretary of Defense may meet, collaborate, and share resources with other Federal agencies for purposes of assisting in the use and appropriate growth of regional advanced technology clusters under this section.

“(d) DEFINITIONS.—In this section:

“(1) The term ‘appropriate congressional committees’ means—

“(A) the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives];

“(B) the Committee on Commerce, Science, and Transportation of the Senate; and

“(C) the Committee on Energy and Commerce of the House of Representatives.

“(2) The term ‘regional advanced technology clusters’ means geographic centers focused on building science and technology-based innovation capacity in areas of local and regional strength to foster economic growth and improve quality of life.”

ADVANCED ROTORCRAFT FLIGHT RESEARCH AND DEVELOPMENT

Pub. L. 112-81, div. A, title II, §222, Dec. 31, 2011, 125 Stat. 1336, provided that:

“(a) PROGRAM AUTHORIZED.—The Secretary of the Army may conduct a program for flight research and demonstration of advanced rotorcraft technology.

“(b) GOALS AND OBJECTIVES.—The goals and objectives of the program authorized by subsection (a) are as follows:

“(1) To flight demonstrate the ability of advanced rotorcraft technology to expand the flight envelope and improve the speed, range, payload, ceiling, survivability, reliability, and affordability of current and future rotorcraft of the Department of Defense.

“(2) To mature advanced rotorcraft technology and obtain flight-test data to—

“(A) support the assessment of such technology for future rotorcraft platform development programs of the Department; and

“(B) have the ability to add such technology to the existing rotorcraft of the Department to extend the capability and life of such rotorcraft until next-generation platforms are fielded.

“(c) ELEMENTS OF PROGRAM.—The program authorized by subsection (a) may include—

“(1) integration and demonstration of advanced rotorcraft technology to meet the goals and objectives described in subsection (b); and

“(2) flight demonstration of the advanced rotorcraft technology test bed under the experimental airworthiness process of the Federal Aviation Administration or other appropriate airworthiness process approved by the Secretary of Defense.

“(d) COMPETITION.—In awarding a contract under this section, the Secretary shall use competitive procedures in accordance with the requirements of section 2304 of title 10, United States Code, and shall consider a timely offer submitted by a small business concern (as defined in section 2225(f)(3) of such title) in accordance with the specifications and evaluation factors specified in the solicitation.”

PROGRAM FOR RESEARCH, DEVELOPMENT, AND DEPLOYMENT OF ADVANCED GROUND VEHICLES, GROUND VEHICLE SYSTEMS, AND COMPONENTS

Pub. L. 111-383, div. A, title II, §214, Jan. 7, 2011, 124 Stat. 4164, provided that:

“(a) PROGRAM AUTHORIZED.—The Secretary of Defense may carry out a program for research and development on, and deployment of, advanced technology ground vehicles, ground vehicle systems, and components within the Department of Defense.

“(b) GOALS AND OBJECTIVES.—The goals and objectives of the program authorized by subsection (a) are as follows:

“(1) To identify and support technological advances that are necessary for the development of advanced technologies for use in ground vehicles of types to be used by the Department of Defense.

“(2) To procure and deploy significant quantities of advanced technology ground vehicles for use by the Department.

“(3) To maximize the leverage of Federal and non-government funds used for the development and deployment of advanced technology ground vehicles, ground vehicle systems, and components.

“(c) ELEMENTS OF PROGRAM.—The program authorized by subsection (a) may include—

“(1) enhanced research and development activities for advanced technology ground vehicles, ground vehicle systems, and components, including—

“(A) increased investments in research and development of batteries, advanced materials, power electronics, fuel cells and fuel cell systems, hybrid systems, and advanced engines;

“(B) pilot projects for the demonstration of advanced technologies in ground vehicles for use by the Department of Defense; and

“(C) the establishment of public-private partnerships, including research centers, manufacturing and prototyping facilities, and test beds, to speed the development, deployment, and transition to use of advanced technology ground vehicles, ground vehicle systems, and components; and

“(2) enhanced activities to procure and deploy advanced technology ground vehicles in the Department, including—

“(A) preferences for the purchase of advanced technology ground vehicles;

“(B) the use of authorities available to the Secretary of Defense to stimulate the development and production of advanced technology systems and ground vehicles through purchases, loan guarantees, and other mechanisms;

“(C) pilot programs to demonstrate advanced technology ground vehicles and associated infrastructure at select defense installations;

“(D) metrics to evaluate environmental and other benefits, life cycle costs, and greenhouse gas emissions associated with the deployment of advanced technology ground vehicles; and

“(E) schedules and objectives for the conversion of the ground vehicle fleet of the Department to advanced technology ground vehicles.

“(d) COOPERATION WITH INDUSTRY AND ACADEMIA.—

“(1) IN GENERAL.—The Secretary may carry out the program authorized by subsection (a) through partnerships and other cooperative agreements with private sector entities, including—

“(A) universities and other academic institutions;

“(B) companies in the automobile and truck manufacturing industry;

“(C) companies that supply systems and components to the automobile and truck manufacturing industry; and

“(D) any other companies or private sector entities that the Secretary considers appropriate.

“(2) NATURE OF COOPERATION.—The Secretary shall ensure that any partnership or cooperative agreement under paragraph (1) provides for private sector participants to collectively contribute, in cash or in kind, not less than one-half of the total cost of the activities carried out under such partnership or cooperative agreement.

“(e) COORDINATION WITH OTHER FEDERAL AGENCIES.—The program authorized by subsection (a) shall be carried out, to the maximum extent practicable, in coordination with the Department of Energy and other appropriate departments and agencies of the Federal Government.”

PILOT PROGRAM TO INCLUDE TECHNOLOGY PROTECTION FEATURES DURING RESEARCH AND DEVELOPMENT OF DEFENSE SYSTEMS

Pub. L. 111-383, div. A, title II, § 243, Jan. 7, 2011, 124 Stat. 4178, as amended by Pub. L. 112-81, div. A, title II, § 252, Dec. 31, 2011, 125 Stat. 1347; Pub. L. 113-66, div. A, title II, § 264, Dec. 26, 2013, 127 Stat. 726; Pub. L. 113-291, div. A, title II, § 231, Dec. 19, 2014, 128 Stat. 3332, provided that:

“(a) PILOT PROGRAM.—The Secretary of Defense shall carry out a pilot program to develop and incorporate technology protection features in a designated system during the research and development phase of such system.

“(b) COST-SHARING.—Any contract for the design or development of a system resulting from activities under subsection (a) for the purpose of enhancing or enabling the exportability of the system either—

“(1) for the development of program protection strategies for the system; or

“(2) for the design and incorporation of exportability features into the system, shall include a cost-sharing provision that requires the contractor to bear half of the cost of such activities, or such other portion of such cost as the Secretary considers appropriate upon showing of good cause.

“(c) ANNUAL REPORTS.—Not later than December 31 of each year in which the Secretary carries out the pilot program established under this section, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the pilot program, including a list of each designated system included in the program.

“(d) TERMINATION.—The pilot program established under this section shall terminate on October 1, 2020.

“(e) DEFINITIONS.—In this section:

“(1) The term ‘designated system’ means any system (including a major system, as defined in section

2302(5) of title 10, United States Code) that the Under Secretary of Defense for Acquisition, Technology, and Logistics designates as being included in the pilot program established under this section.

“(2) The term ‘technology protection features’ means the technical modifications necessary to protect critical program information, including anti-tamper technologies and other systems engineering activities intended to prevent or delay exploitation of critical technologies in a designated system.”

PROGRAM TO ASSESS THE UTILITY OF NON-LETHAL WEAPONS

Pub. L. 111-383, div. A, title X, § 1078, Jan. 7, 2011, 124 Stat. 4380, provided that:

“(a) SENSE OF CONGRESS.—It is the sense of Congress that the Secretary of Defense should support the research, development, test, and evaluation, procurement, and fielding of effective non-lethal weapons and technologies explicitly designed to, with respect to counterinsurgency operations, reduce military casualties and fatalities, improve military mission accomplishment and operational effectiveness, reduce civilian casualties and fatalities, and minimize undesired damage to property and the environment.

“(b) PROGRAM REQUIRED.—

“(1) DEMONSTRATION AND ASSESSMENT.—The Secretary of Defense, acting through the Executive Agent for Non-lethal Weapons and in coordination with the Secretaries of the military departments and the combatant commanders, shall carry out a program to demonstrate and assess the utility and effectiveness of non-lethal weapons to provide escalation of force options in counter-insurgency operations.

“(2) NON-LETHAL WEAPONS EVALUATED.—In evaluating non-lethal weapons under the program under this subsection, the Secretary shall include non-lethal weapons designed for counter-personnel and counter-materiel missions.

“(c) REPORT.—

“(1) REPORT REQUIRED.—Not later than October 1, 2011, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the role and utility of non-lethal weapons and technologies in counterinsurgency operations.

“(2) ELEMENTS.—The report under paragraph (1) shall include the following:

“(A) A description of the results of any demonstrations and assessments of non-lethal weapons conducted during fiscal year 2011.

“(B) A description of the Secretary’s plans for any demonstrations and assessments of non-lethal weapons to be conducted during fiscal years 2012 and 2013.

“(C) A description of the extent to which non-lethal weapons doctrine, training, and employment include the use of strategic communications strategies to enable the effective employment of non-lethal weapons.

“(D) A description of the input of the military departments in developing concepts of operations and tactics, techniques, and procedures for incorporating non-lethal weapons into the current escalation of force procedures of each department.

“(E) A description of the extent to which non-lethal weapons and technologies are integrated into the standard equipment and training of military units.”

MECHANISMS TO PROVIDE FUNDS FOR DEFENSE LABORATORIES FOR RESEARCH AND DEVELOPMENT OF TECHNOLOGIES FOR MILITARY MISSIONS

Pub. L. 110-417, [div. A], title II, § 219, Oct. 14, 2008, 122 Stat. 4389, as amended by Pub. L. 111-84, div. B, title XXVIII, § 2801(c), Oct. 28, 2009, 123 Stat. 2660; Pub. L. 112-81, div. A, title II, § 253, Dec. 31, 2011, 125 Stat. 1347; Pub. L. 113-66, div. A, title II, § 262(a), (b), Dec. 26, 2013, 127 Stat. 725, 726, provided that:

“(a) MECHANISMS TO PROVIDE FUNDS.—

“(1) IN GENERAL.—The Secretary of Defense, in consultation with the Secretaries of the military departments, shall establish mechanisms under which the director of a defense laboratory may use an amount of funds equal to not more than three percent of all funds available to the defense laboratory for the following purposes:

“(A) To fund innovative basic and applied research that is conducted at the defense laboratory and supports military missions.

“(B) To fund development programs that support the transition of technologies developed by the defense laboratory into operational use.

“(C) To fund workforce development activities that improve the capacity of the defense laboratory to recruit and retain personnel with needed scientific and engineering expertise.

“(D) To fund the revitalization[,] recapitalization, or minor military construction of the laboratory infrastructure, in accordance with subsection (b).

“(2) CONSULTATION REQUIRED.—The mechanisms established under paragraph (1) shall provide that funding shall be used under paragraph (1) at the discretion of the director of a defense laboratory in consultation with the science and technology executive of the military department concerned.

“(b) AVAILABILITY OF FUNDS FOR INFRASTRUCTURE PROJECTS.—

“(1) IN GENERAL.—Subject to the provisions of this subsection, funds available under a mechanism under subsection (a)(1)(D) that are solely intended to carry out a laboratory infrastructure project shall be available for such project until expended.

“(2) PRIOR NOTICE OF COSTS OF PROJECTS.—Funds shall be available in accordance with paragraph (1) for a project referred to in such paragraph only if the Secretary notifies the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] of the total cost of the project before the date on which the Secretary uses a mechanism under subsection (a)(1)(D) for such project.

“(3) ACCUMULATION OF FUNDS FOR PROJECTS.—Funds may accumulate under a mechanism under subsection (a) for a project referred to in paragraph (1) for not more than five years.

“(4) COST LIMIT COMPLIANCE.—The Secretary shall ensure that a project referred to in paragraph (1) for which funds are made available in accordance with such paragraph complies with the applicable cost limitations in the following provisions of law:

“(A) Section 2805(d) of title 10, United States Code, with respect to revitalization and recapitalization projects.

“(B) Section 2811 of such title, with respect to repair projects.

“(c) ANNUAL REPORT ON USE OF AUTHORITY.—Not later than March 1 of each year, the Secretary of Defense shall submit to the congressional defense committees a report on the use of the authority under subsection (a) during the preceding year.

“(d) SUNSET.—The authority under subsection (a) shall expire on September 30, 2020.”

[Pub. L. 113–66, div. A, title II, § 262(c), Dec. 26, 2013, 127 Stat. 726, provided that: “Subsection (b) of such section 219 [section 219 of Pub. L. 110–417, set out above], as added by subsection (a)(3), shall apply with respect to funds made available under such section on or after the date of the enactment of this Act [Dec. 26, 2013].”]

SCIENCE AND TECHNOLOGY INVESTMENT STRATEGY TO DEFEAT OR COUNTER IMPROVISED EXPLOSIVE DEVICES

Pub. L. 110–417, [div. A], title XV, § 1504, Oct. 14, 2008, 122 Stat. 4650, as amended by Pub. L. 112–81, div. A, title X, § 1062(b), Dec. 31, 2011, 125 Stat. 1585; Pub. L. 112–239, div. A, title X, § 1076(c)(2)(D), Jan. 2, 2013, 126 Stat. 1950, provided that:

“(a) STRATEGY REQUIRED.—The Director of the Joint Improvised Explosive Device Defeat Organization

(JIEDDO), jointly with the Assistant Secretary of Defense for Research and Engineering, shall develop a comprehensive science and technology investment strategy for countering the threat of improvised explosive devices (IEDs).

“(b) ELEMENTS.—The strategy developed under subsection (a) shall include the following:

“(1) Identification of counter-IED capability gaps.

“(2) A taxonomy describing the major technical areas for the Department of Defense to address the counter-IED capability gaps and in which science and technology funding investments should be made.

“(3) Identification of funded programs to develop or mature technologies from or to the level of system or subsystem model or prototype demonstration in a relevant environment, and investment levels for those initiatives.

“(4) Identification of JIEDDO’s mechanisms for coordinating Department of Defense and Federal Government science and technology activities in areas covered by the strategy.

“(5) Identification of technology transition mechanisms developed or utilized to efficiently transition technologies to acquisition programs of the Department of Defense or into operational use, including a summary of counter-IED technologies transitioned from JIEDDO, the military departments, and other Defense Agencies to the acquisition programs or into operational use.

“(6) Identification of high priority basic research efforts that should be addressed through JIEDDO or other Department of Defense activities to support development of next generation IED defeat capabilities.

“(7) Identification of barriers or issues, such as industrial base, workforce, or statutory or regulatory barriers, that could hinder the efficient and effective development and operational use of advanced IED defeat capabilities, and discussion of activities undertaken to address them.

“(8) Identification of the measures of effectiveness for the overall Department of Defense science and technology counter-IED effort.

“(9) Such other matters as the Director and the Assistant Secretary consider appropriate.”

HYPERSONICS DEVELOPMENT

Pub. L. 109–364, div. A, title II, § 218, Oct. 17, 2006, 120 Stat. 2126, as amended by Pub. L. 112–81, div. A, title II, § 241, Dec. 31, 2011, 125 Stat. 1343; Pub. L. 114–92, div. A, title X, § 1079(f), Nov. 25, 2015, 129 Stat. 999, provided that:

“(a) ESTABLISHMENT OF JOINT TECHNOLOGY OFFICE ON HYPERSONICS.—The Secretary of Defense shall establish within the Office of the Secretary of Defense a joint technology office on hypersonics. The office shall carry out the program required under subsection (b), and shall have such other responsibilities relating to hypersonics as the Secretary shall specify.

“(b) PROGRAM ON HYPERSONICS.—The joint technology office established under subsection (a) shall carry out a program for the development of hypersonics for defense purposes.

“(c) RESPONSIBILITIES.—In carrying out the program required by subsection (b), the joint technology office established under subsection (a) shall do the following:

“(1) Coordinate and integrate current and future research, development, test, and evaluation programs and system demonstration programs of the Department of Defense on hypersonics.

“(2) Undertake appropriate actions to ensure—

“(A) close and continuous integration of the programs on hypersonics of the military departments with the programs on hypersonics of the Defense Agencies;

“(B) coordination of the programs referred to in subparagraph (A) with the programs on hypersonics of the National Aeronautics and Space Administration; and

“(C) that developmental testing resources are adequate and facilities are made available in a

timely manner to support hypersonics research, demonstration programs, and system development.

“(3) Approve demonstration programs on hypersonic systems.

“(4) Ensure that any demonstration program on hypersonic systems that is carried out in any year after its approval under paragraph (3) is carried out only if certified under subsection (e) as being consistent with the roadmap under subsection (d).

“(d) ROADMAP.—

“(1) ROADMAP REQUIRED.—The joint technology office established under subsection (a) shall develop, and every two years revise, a roadmap for the hypersonics programs of the Department of Defense.

“(2) COORDINATION.—The roadmap shall be developed and revised under paragraph (1) in coordination with the Joint Staff and in consultation with the National Aeronautics and Space Administration.

“(3) ELEMENTS.—The roadmap shall include the following matters:

“(A) Anticipated or potential mission requirements for hypersonics.

“(B) Short-term, mid-term, and long-term goals for the Department of Defense on hypersonics, which shall be consistent with the missions and anticipated requirements of the Department over the applicable period.

“(C) A schedule for meeting such goals, including—

“(i) the activities and funding anticipated to be required for meeting such goals; and

“(ii) the activities of the National Aeronautics and Space Administration to be leveraged by the Department to meet such goals.

“(D) The test and evaluation facilities required to support the activities identified in subparagraph (C), along with the schedule and funding required to upgrade those facilities, as necessary.

“(E) Acquisition transition plans for hypersonics.

“(e) ANNUAL REVIEW AND CERTIFICATION OF FUNDING.—

“(1) ANNUAL REVIEW.—The joint technology office established under subsection (a) shall conduct on an annual basis a review of—

“(A) the funding available for research, development, test, and evaluation and demonstration programs within the Department of Defense for hypersonics, in order to determine whether or not such funding is consistent with the roadmap developed under subsection (d); and

“(B) the hypersonics demonstration programs of the Department, in order to determine whether or not such programs avoid duplication of effort and support the goals of the Department in a manner consistent with the roadmap developed under subsection (d).

“(2) CERTIFICATION.—The joint technology office shall, as a result of each review under paragraph (1), certify to the Secretary whether or not the funding and programs subject to such review are consistent with the roadmap developed under subsection (d).

“(3) TERMINATION.—The requirements of this subsection shall terminate after the submittal to Congress of the budget for fiscal year 2016 pursuant to section 1105 of title 31, United States Code.”

COLLABORATIVE PROGRAM FOR RESEARCH AND DEVELOPMENT OF VACUUM ELECTRONICS TECHNOLOGIES

Pub. L. 108-375, div. A, title II, §212, Oct. 28, 2004, 118 Stat. 1832, as amended by Pub. L. 112-239, div. A, title X, §1076(c)(2)(A)(iii), Jan. 2, 2013, 126 Stat. 1950, provided that:

“(a) PROGRAM REQUIRED.—The Secretary of Defense shall establish a program for research and development in advanced vacuum electronics to meet the requirements of Department of Defense systems.

“(b) DESCRIPTION OF PROGRAM.—The program under subsection (a) shall be carried out collaboratively by the Assistant Secretary of Defense for Research and Engineering, the Secretary of the Navy, the Secretary

of the Air Force, the Secretary of the Army, and other appropriate elements of the Department of Defense. The program shall include the following activities:

“(1) Activities needed for development and maturation of advanced vacuum electronics technologies needed to meet the requirements of the Department of Defense.

“(2) Identification of legacy and developmental Department of Defense systems which may make use of advanced vacuum electronics under the program.

“(c) REPORT.—Not later than January 31, 2005, the Assistant Secretary of Defense for Research and Engineering shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of Senate and House of Representatives] a report on the implementation of the program under subsection (a). The report shall include the following:

“(1) Identification of the organization to have lead responsibility for carrying out the program.

“(2) Assessment of the role of investing in vacuum electronics technologies as part of the overall strategy of the Department of Defense for investing in electronics technologies to meet the requirements of the Department.

“(3) The management plan and schedule for the program and any agreements relating to that plan.

“(4) Identification of the funding required for fiscal year 2006 and for the future-years defense program to carry out the program.

“(5) A list of program capability goals and objectives.

“(6) An outline of the role of basic and applied research in support of the development and maturation of advanced vacuum electronics technologies needed to meet the requirements of the Department of Defense.

“(7) Assessment of global capabilities in vacuum electronics technologies and the effect of those capabilities on the national security and economic competitiveness of the United States.”

DEPARTMENT OF DEFENSE PROGRAM TO EXPAND HIGH-SPEED, HIGH-BANDWIDTH CAPABILITIES FOR NETWORK-CENTRIC OPERATIONS

Pub. L. 108-136, div. A, title II, §234, Nov. 24, 2003, 117 Stat. 1423, provided that:

“(a) IN GENERAL.—The Secretary of Defense shall carry out a program of research and development to promote the development of high-speed, high-bandwidth communications capabilities for support of network-centric operations by the Armed Forces.

“(b) PURPOSES.—The purposes of the program required by subsection (a) are as follows:

“(1) To accelerate the development and fielding by the Armed Forces of network-centric operational capabilities (including expanded use of unmanned vehicles, satellite communications, and sensors) through the promotion of research and development, and the focused coordination of programs, to achieve high-speed, high-bandwidth connectivity to military assets.

“(2) To provide for the development of equipment and technologies for military high-speed, high-bandwidth communications capabilities for support of network-centric operations.

“(c) DESCRIPTION OF PROGRAM.—In carrying out the program of research and development required by subsection (a), the Secretary shall—

“(1) identify areas of advanced wireless communications in which research and development, or the use of emerging technologies, has significant potential to improve the performance, efficiency, cost, and flexibility of advanced communications systems for support of network-centric operations;

“(2) develop a coordinated plan for research and development on—

“(A) improved spectrum access through spectrum-efficient communications for support of network-centric operations;

“(B) high-speed, high-bandwidth communications;

“(C) networks, including complex ad hoc adaptive network structures;

“(D) communications devices, including efficient receivers and transmitters;

“(E) computer software and wireless communication applications, including robust security and encryption; and

“(F) any other matters that the Secretary considers appropriate for the purposes described in subsection (b);

“(3) ensure joint research and development, and promote joint systems acquisition and deployment, among the military departments and defense agencies, including the development of common cross-service technology requirements and doctrine, so as to enhance interoperability among the military services and defense agencies;

“(4) conduct joint experimentation among the Armed Forces, and coordinate with the Joint Forces Command, on experimentation to support the development of network-centric warfare capabilities from the operational to the small unit level in the Armed Forces;

“(5) consult with other Federal entities and with private industry to develop cooperative research and development efforts, to the extent that such efforts are practicable.

“(d) REPORT.—(1) The Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of Senate and House of Representatives], together with the budget justification materials submitted to Congress in support of the Department of Defense budget for fiscal year 2006 (as submitted with the budget of the President under section 1105(a) of title 31, United States Code), a report on the activities carried out under this section through the date on which the report is submitted.

“(2) The report under paragraph (1) shall include the following:

“(A) A description of the research and development activities carried out under subsection (a), including the particular activities carried out under the plan required by subsection (c)(2).

“(B) Current and proposed funding for the particular activities carried out under that plan, as set forth in each of subparagraphs (A) through (F) of subsection (c)(2).

“(C) A description of the joint research and development activities required by subsection (c)(3).

“(D) A description of the joint experimentation activities required by subsection (c)(4).

“(E) An analysis of the effects on recent military operations of limitations on communications bandwidth and access to radio frequency spectrum.

“(F) An assessment of the effect of additional resources on the ability to achieve the purposes described in subsection (b).

“(G) Such recommendations for additional activities under this section as the Secretary considers appropriate to meet the purposes described in subsection (b).”

RESEARCH AND DEVELOPMENT OF DEFENSE BIOMEDICAL COUNTERMEASURES

Pub. L. 108-136, div. A, title XVI, §1601, Nov. 24, 2003, 117 Stat. 1680, as amended by Pub. L. 112-81, div. A, title X, §1062(g)(3), Dec. 31, 2011, 125 Stat. 1585; Pub. L. 113-291, div. A, title X, §1071(b)(5)(B), Dec. 19, 2014, 128 Stat. 3507; Pub. L. 114-92, div. A, title VIII, §815(d), Nov. 25, 2015, 129 Stat. 896, provided that:

“(a) IN GENERAL.—The Secretary of Defense (in this section referred to as the ‘Secretary’) shall carry out a program to accelerate the research, development and procurement of biomedical countermeasures, including but not limited to therapeutics and vaccines, for the protection of the Armed Forces from attack by one or more biological, chemical, radiological, or nuclear agents.

“(b) INTERAGENCY COOPERATION.—(1) In carrying out the program under subsection (a), the Secretary may

enter into interagency agreements and other collaborative undertakings with other Federal agencies.

“(2) The Secretary, through regular, structured, and close consultation with the Secretary of Health and Human Services and the Secretary of Homeland Security, shall ensure that the activities of the Department of Defense in carrying out the program are coordinated with, complement, and do not unnecessarily duplicate activities of the Department of Health and Human Services or the Department of Homeland Security.

“(c) EXPEDITED PROCUREMENT AUTHORITY.—(1) For any procurement of property or services for use (as determined by the Secretary) in performing, administering, or supporting biomedical countermeasures research and development, the Secretary may, when appropriate, use streamlined acquisition procedures and other expedited procurement procedures authorized in—

“(A) section 1903 of title 41, United States Code; and

“(B) sections 2371 and 2371b of title 10, United States Code.

“(2) Notwithstanding paragraph (1) and the provisions of law referred to in such paragraph, each of the following provisions shall apply to the procurements described in this subsection to the same extent that such provisions would apply to such procurements in the absence of paragraph (1):

“(A) Chapter 37 of title 40, United States Code (relating to contract work hours and safety standards).

“(B) Section 8703(a) of title 41, United States Code.

“(C) Section 2313 of title 10, United States Code (relating to the examination of contractor records).

“(3) The Secretary shall institute appropriate internal controls for use of the authority under paragraph (1), including requirements for documenting the justification for each use of such authority.

“(d) DEPARTMENT OF DEFENSE FACILITIES AUTHORITY.—(1) If the Secretary determines that it is necessary to acquire, lease, construct, or improve laboratories, research facilities, and other real property of the Department of Defense in order to carry out the program under this section, the Secretary may do so using the procedures set forth in paragraphs (2), (3), (4), and (5).

“(2) The Secretary shall use existing construction authorities provided by subchapter I of chapter 169 of title 10, United States Code, to the maximum extent possible.

“(3)(A) If the Secretary determines that use of authorities in paragraph (2) would prevent the Department from meeting a specific facility requirement for the program, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of Senate and House of Representatives] advance notification, which shall include the following:

“(i) Certification by the Secretary that use of existing construction authorities would prevent the Department from meeting the specific facility requirement.

“(ii) A detailed explanation of the reasons why existing authorities cannot be used.

“(iii) A justification of the facility requirement.

“(iv) Construction project data and estimated cost.

“(v) Identification of the source or sources of the funds proposed to be expended.

“(B) The facility project may be carried out only after the end of the 21-day period beginning on the date the notification is received by the congressional defense committees.

“(4) If the Secretary determines: (A) that the facility is vital to national security or to the protection of health, safety, or the quality of the environment; and (B) the requirement for the facility is so urgent that the advance notification in paragraph (3) and the subsequent 21-day deferral of the facility project would threaten the life, health, or safety of personnel, or would otherwise jeopardize national security, the Secretary may obligate funds for the facility and notify the congressional defense committees within seven

days after the date on which appropriated funds are obligated with the information required in paragraph (3).

“(5) Nothing in this section shall be construed to authorize the Secretary to acquire, construct, lease, or improve a facility having general utility beyond the specific purposes of the program.

“(6) In this subsection, the term ‘facility’ has the meaning given the term in section 2801(c) of title 10, United States Code.

“(e) AUTHORITY FOR PERSONAL SERVICES CONTRACTS.—(1) Subject to paragraph (2), the authority provided by section 1091 of title 10, United States Code, for personal services contracts to carry out health care responsibilities in medical treatment facilities of the Department of Defense shall also be available, subject to the same terms and conditions, for personal services contracts to carry out research and development activities under this section. The number of individuals whose personal services are obtained under this subsection may not exceed 30 at any time.

“(2) The authority provided by such section 1091 may not be used for a personal services contract unless the contracting officer for the contract ensures that—

“(A) the services to be procured are urgent or unique; and

“(B) it would not be practicable for the Department of Defense to obtain such services by other measures.

“(f) STREAMLINED PERSONNEL AUTHORITY.—(1) The Secretary may appoint highly qualified experts, including scientific and technical personnel, to carry out research and development under this section in accordance with the authorities provided in section 342 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103-337; 108 Stat. 2721), section 1101 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105-261 [5 U.S.C. 3104 note]), and section 1101 of this Act [enacting chapter 99 of Title 5, Government Organization and Employees, and provisions set out as a note under section 9901 of Title 5].

“(2) The Secretary may use the authority under paragraph (1) only upon a determination by the Secretary that use of such authority is necessary to accelerate the research and development under the program.

“(3) The Secretary shall institute appropriate internal controls for each use of the authority under paragraph (1).”

Pub. L. 107-107, div. A, title X, § 1044(a), Dec. 28, 2001, 115 Stat. 1219, provided that:

“(1) The Secretary of Defense shall carry out a program to aggressively accelerate the research, development, testing, and licensure of new medical countermeasures for defense against the biological warfare agents that are the highest threat.

“(2) The program shall include the following activities:

“(A) As the program’s first priority, investment in multiple new technologies for medical countermeasures for defense against the biological warfare agents that are the highest threat, including for the prevention and treatment of anthrax.

“(B) Leveraging of ideas and technologies from the biological technology industry.”

VEHICLE FUEL CELL PROGRAM

Pub. L. 107-314, div. A, title II, § 245, Dec. 2, 2002, 116 Stat. 2500, provided that:

“(a) PROGRAM REQUIRED.—The Secretary of Defense shall carry out a program for the development of vehicle fuel cell technology.

“(b) GOALS AND OBJECTIVES.—The goals and objectives of the program shall be as follows:

“(1) To identify and support technological advances that are necessary for the development of fuel cell technology for use in vehicles of types to be used by the Department of Defense.

“(2) To ensure that critical technology advances are shared among the various fuel cell technology programs within the Federal Government.

“(3) To maximize the leverage of Federal funds that are used for the development of fuel cell technology.

“(c) CONTENT OF PROGRAM.—The program shall include—

“(1) development of vehicle propulsion technologies and fuel cell auxiliary power units, together with pilot projects for the demonstration of such technologies, as appropriate; and

“(2) development of technologies necessary to address critical issues with respect to vehicle fuel cells, such as issues relating to hydrogen storage and hydrogen fuel infrastructure.

“(d) COOPERATION WITH INDUSTRY.—(1) The Secretary shall carry out the program in cooperation with companies selected by the Secretary. The Secretary shall select such companies from among—

“(A) companies in the automobile and truck manufacturing industry;

“(B) companies in the business of supplying systems and components to that industry; and

“(C) companies in any other industries that the Secretary considers appropriate.

“(2) The Secretary may enter into a cooperative agreement with one or more companies selected under paragraph (1) to establish an entity for carrying out activities required by subsection (c).

“(3) The Secretary shall ensure that companies referred to in paragraph (1) collectively contribute, in cash or in kind, not less than one-half of the total cost of carrying out the program under this section.

“(e) COORDINATION WITH OTHER FEDERAL AGENCIES.—The Secretary shall carry out the program using a coordinating mechanism for sharing information and resources with the Department of Energy and other Federal agencies.

“(f) INITIAL [SIC] FUNDING.—Of the funds authorized to be appropriated by section 201(4) [116 Stat. 2479], \$10,000,000 shall be available for the program required by this section.”

DEFENSE NANOTECHNOLOGY RESEARCH AND DEVELOPMENT PROGRAM

Pub. L. 107-314, div. A, title II, § 246, Dec. 2, 2002, 116 Stat. 2500, as amended by Pub. L. 110-181, div. A, title II, § 240, Jan. 28, 2008, 122 Stat. 48; Pub. L. 111-84, div. A, title II, § 242, Oct. 28, 2009, 123 Stat. 2237; Pub. L. 112-239, div. A, title X, § 1076(c)(2)(A)(iv), Jan. 2, 2013, 126 Stat. 1950, provided that:

“(a) ESTABLISHMENT.—The Secretary of Defense shall carry out a defense nanotechnology research and development program.

“(b) PURPOSES.—The purposes of the program are as follows:

“(1) To ensure United States global superiority in nanotechnology necessary for meeting national security requirements.

“(2) To coordinate all nanoscale research and development within the Department of Defense, and to provide for interagency cooperation and collaboration on nanoscale research and development between the Department of Defense and other departments and agencies of the United States that are involved in the National Nanotechnology Initiative and with the National Nanotechnology Coordination Office under section 3 of the 21st Century Nanotechnology Research and Development Act (15 U.S.C. 7502).

“(3) To develop and manage a portfolio of nanotechnology research and development initiatives that is stable, consistent, and balanced across scientific disciplines.

“(4) To accelerate the transition and deployment of technologies and concepts derived from nanoscale research and development into the Armed Forces, and to establish policies, procedures, and standards for measuring the success of such efforts.

“(5) To collect, synthesize, and disseminate critical information on nanoscale research and development.

“(c) ADMINISTRATION.—In carrying out the program, the Secretary shall act through the Under Secretary of Defense for Acquisition, Technology, and Logistics, who shall supervise the planning, management, and coordination of the program. The Under Secretary, in

consultation with the Secretaries of the military departments and the heads of participating Defense Agencies and other departments and agencies of the United States, shall—

“(1) prescribe a set of long-term challenges and a set of specific technical goals for the program;

“(2) develop a coordinated and integrated research and investment plan for meeting the long-term challenges and achieving the specific technical goals that builds upon investments by the Department and other departments and agencies participating in the National Nanotechnology Initiative in nanotechnology research and development;

“(3) develop memoranda of agreement, joint funding agreements, and other cooperative arrangements necessary for meeting the long-term challenges and achieving the specific technical goals; and

“(4) oversee Department of Defense participation in interagency coordination of the program with other departments and agencies participating in the National Nanotechnology Initiative.

“(d) STRATEGIC PLAN.—The Under Secretary shall develop and maintain a strategic plan for defense nanotechnology research and development that—

“(1) is integrated with the strategic plan for the National Nanotechnology Initiative and the strategic plans of the Assistant Secretary of Defense for Research and Engineering, the military departments, and the Defense Agencies; and

“(2) includes a clear strategy for transitioning the research into products needed by the Department.

“(e) REPORTS.—The Under Secretary of Defense for Acquisition, Technology, and Logistics shall submit to the National Science and Technology Council information on the program that covers the information described in paragraphs (1) through (5) of section 2(d) of the 21st Century Nanotechnology Research and Development Act (15 U.S.C. 7501(d)) to be included in the annual report submitted by the Council under that section.”

REPORT ON WEAPONS AND CAPABILITIES TO DEFEAT HARDENED AND DEEPLY BURIED TARGETS

Pub. L. 107-314, div. A, title X, § 1032, Dec. 2, 2002, 116 Stat. 2643, as amended by Pub. L. 108-136, div. C, title XXXI, § 3135, Nov. 24, 2003, 117 Stat. 1752, as amended by Pub. L. 110-181, div. A, title X, § 1041, Jan. 28, 2008, 122 Stat. 310; Pub. L. 111-383, div. A, title X, § 1075(j), Jan. 7, 2011, 124 Stat. 4378, provided that:

“(a) REPORT.—Not later than March 1, 2009, and every two years thereafter, the Secretary of Defense, the Secretary of Energy, and the Director of National Intelligence shall jointly submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives], the Select Committee on Intelligence of the Senate, and the Permanent Select Committee on Intelligence of the House of Representatives a report on the research and development, procurement, and other activities undertaken during the preceding two fiscal years and planned for the current fiscal year and the next fiscal year by the Department of Defense, the Department of Energy, and the intelligence community to develop weapons and capabilities to defeat hardened and deeply buried targets.

“(b) REPORT ELEMENTS.—A report submitted under subsection (a) shall—

“(1) include a discussion of the integration and interoperability of the activities referred to in that subsection that were or will be undertaken during the four-fiscal-year period covered by the report, including a discussion of the relevance of such activities to applicable recommendations by the Chairman of the Joint Chiefs of Staff, assisted under section 181(b) of title 10, United States Code, by the Joint Requirements Oversight Council; and

“(2) set forth separately a description of the activities referred to in that subsection, if any, that were or will be undertaken during the four-fiscal-year period covered by the report by each element of—

“(A) the Department of Defense;

“(B) the Department of Energy; and

“(C) the intelligence community.

“(c) DEFINITION.—In this section, the term ‘intelligence community’ has the meaning given such term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)) [now 50 U.S.C. 3003(4)].

“(d) TERMINATION.—No report is required under this section after the submission of the report that is due on March 1, 2013.

“(e) INTEGRATION ACTIVITIES IN FISCAL YEAR 2003 WITH RESPECT TO RNEP.—The report under subsection (a) that is due on April 1, 2004, shall include, in addition to the elements specified in subsection (b), a description of the integration and interoperability of the research and development, procurement, and other activities undertaken during fiscal year 2003 by the Department of Defense and the Department of Energy with respect to the Robust Nuclear Earth Penetrator.”

PILOT PROGRAMS FOR REVITALIZING LABORATORIES AND TEST AND EVALUATION CENTERS OF DEPARTMENT OF DEFENSE

Pub. L. 107-314, div. A, title II, § 241, Dec. 2, 2002, 116 Stat. 2492, provided that:

“(a) ADDITIONAL PILOT PROGRAM.—(1) The Secretary of Defense may carry out a pilot program to demonstrate improved efficiency in the performance of research, development, test, and evaluation functions of the Department of Defense.

“(2) Under the pilot program, the Secretary of Defense shall provide the director of one science and technology laboratory, and the director of one test and evaluation laboratory, of each military department with authority for the following:

“(A) To use innovative methods of personnel management appropriate for ensuring that the selected laboratories can—

“(i) employ and retain a workforce appropriately balanced between permanent and temporary personnel and among workers with appropriate levels of skills and experience; and

“(ii) effectively shape workforces to ensure that the workforces have the necessary sets of skills and experience to fulfill their organizational missions.

“(B) To develop or expand innovative methods of entering into and expanding cooperative relationships and arrangements with private sector organizations, educational institutions (including primary and secondary schools), and State and local governments to facilitate the training of a future scientific and technical workforce that will contribute significantly to the accomplishment of organizational missions.

“(C) To develop or expand innovative methods of establishing cooperative relationships and arrangements with private sector organizations and educational institutions to promote the establishment of the technological industrial base in areas critical for Department of Defense technological requirements.

“(D) To waive any restrictions not required by law that apply to the demonstration and implementation of methods for achieving the objectives set forth in subparagraphs (A), (B), and (C).

“(3) The Secretary may carry out the pilot program under this subsection at each selected laboratory for a period of three years beginning not later than March 1, 2003.

“(b) RELATIONSHIP TO FISCAL YEARS 1999 AND 2000 REVITALIZATION PILOT PROGRAMS.—The pilot program under this section is in addition to, but may be carried out in conjunction with, the fiscal years 1999 and 2000 revitalization pilot programs.

“(c) REPORTS.—(1) Not later than January 1, 2003, the Secretary shall submit to Congress a report on the experience under the fiscal years 1999 and 2000 revitalization pilot programs in exercising the authorities provided for the administration of those programs. The report shall include a description of—

“(A) barriers to the exercise of the authorities that have been encountered;

“(B) the proposed solutions for overcoming the barriers; and

“(C) the progress made in overcoming the barriers.

“(2) Not later than September 1, 2003, the Secretary of Defense shall submit to Congress a report on the implementation of the pilot program under subsection (a) and the fiscal years 1999 and 2000 revitalization pilot programs. The report shall include, for each such pilot program, the following:

“(A) Each laboratory selected for the pilot program.

“(B) To the extent practicable, a description of the innovative methods that are to be tested at each laboratory.

“(C) The criteria to be used for measuring the success of each method to be tested.

“(3) Not later than 90 days after the expiration of the period for the participation of a laboratory in a pilot program referred to in paragraph (2), the Secretary of Defense shall submit to Congress a final report on the participation of that laboratory in the pilot program. The report shall include the following:

“(A) A description of the methods tested.

“(B) The results of the testing.

“(C) The lessons learned.

“(D) Any proposal for legislation that the Secretary recommends on the basis of the experience at that laboratory under the pilot program.

“(d) EXTENSION OF AUTHORITY FOR OTHER REVITALIZATION PILOT PROGRAMS.—(1) [Amended section 246(a)(4) of Pub. L. 105-261, formerly set out as a note below.]

“(2) [Amended section 245(a)(4) of Pub. L. 106-65, formerly set out as a note below.]

“(e) PARTNERSHIPS UNDER PILOT PROGRAM.—(1) The Secretary of Defense may authorize one or more laboratories and test centers participating in the pilot program under subsection (a) or in one of the fiscal years 1999 and 2000 revitalization pilot programs to enter into a cooperative arrangement (in this subsection referred to as a ‘public-private partnership’) with entities in the private sector and institutions of higher education for the performance of work.

“(2) A competitive process shall be used for the selection of entities outside the Government to participate in a public-private partnership.

“(3)(A) Not more than one public-private partnership may be established as a limited liability company.

“(B) An entity participating in a limited liability company as a party to a public-private partnership under the pilot program may contribute funds to the company, accept contributions of funds for the company, and provide materials, services, and use of facilities for research, technology, and infrastructure of the company, if it is determined under regulations prescribed by the Secretary of Defense that doing so will improve the efficiency of the performance of research, test, and evaluation functions of the Department of Defense.

“(f) FISCAL YEARS 1999 AND 2000 REVITALIZATION PILOT PROGRAMS DEFINED.—In this section, the term ‘fiscal years 1999 and 2000 revitalization pilot programs’ means—

“(1) the pilot programs authorized by section 246 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105-261; 112 Stat. 1955; [former] 10 U.S.C. 2358 note); and

“(2) the pilot programs authorized by section 245 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106-65; 113 Stat. 552; [former] 10 U.S.C. 2358 note).”

Pub. L. 106-65, div. A, title II, § 245, Oct. 5, 1999, 113 Stat. 552, as amended by Pub. L. 107-314, div. A, title II, § 241(d)(2), Dec. 2, 2002, 116 Stat. 2493, authorized the Secretary of Defense to carry out a pilot program for up to five years beginning not later than Mar. 1, 2000, to demonstrate improved efficiency in the performance of research, development, test, and evaluation functions of the Department of Defense, and directed the Secretary to submit to Congress a report on the implementation of the program not later than Mar. 1, 2000,

and a final report promptly after the expiration of the period for participation in the program.

Pub. L. 105-261, div. A, title II, § 246, Oct. 17, 1998, 112 Stat. 1955, as amended by Pub. L. 107-314, div. A, title II, § 241(d)(1), Dec. 2, 2002, 116 Stat. 2493, authorized the Secretary of Defense to carry out a pilot program for up to six years beginning not later than Mar. 1, 1999, to demonstrate improved cooperative relationships with universities and other private sector entities for the performance of research and development functions, and directed the Secretary to submit a report on the implementation of the program to Congress not later than Mar. 1, 1999, and a final report on participation in the program promptly after the expiration of the period for participation.

DEFENSE EXPERIMENTAL PROGRAM TO STIMULATE COMPETITIVE RESEARCH

Pub. L. 105-18, title I, § 307, June 12, 1997, 111 Stat. 169, provided that: “For the purposes of implementing the 1997 Defense Experimental Program to Stimulate Competitive Research (DEPSCoR), the term ‘State’ means a State of the United States, the District of Columbia, Puerto Rico, Guam and the Virgin Islands of the United States, American Samoa and the Commonwealth of the Northern Mariana Islands.”

Pub. L. 103-337, div. A, title II, § 257, Oct. 5, 1994, 108 Stat. 2705, as amended by Pub. L. 104-106, div. A, title II, § 273, Feb. 10, 1996, 110 Stat. 239; Pub. L. 104-201, div. A, title II, § 264, Sept. 23, 1996, 110 Stat. 2465; Pub. L. 105-85, div. A, title II, § 243, Nov. 18, 1997, 111 Stat. 1667; Pub. L. 106-65, div. A, title IX, § 911(a)(1), Oct. 5, 1999, 113 Stat. 717; Pub. L. 107-314, div. A, title II, § 247, Dec. 2, 2002, 116 Stat. 2502; Pub. L. 110-181, div. A, title II, § 239, Jan. 28, 2008, 122 Stat. 48; Pub. L. 112-239, div. A, title X, § 1076(c)(2)(A)(v), Jan. 2, 2013, 126 Stat. 1950, provided that:

“(a) PROGRAM REQUIRED.—The Secretary of Defense, acting through the Assistant Secretary of Defense for Research and Engineering, shall carry out a Defense Experimental Program to Stimulate Competitive Research (DEPSCoR) as part of the university research programs of the Department of Defense.

“(b) PROGRAM OBJECTIVES.—The objectives of the program are as follows:

“(1) To enhance the capabilities of institutions of higher education in eligible States to develop, plan, and execute science and engineering research that is competitive under the peer-review systems used for awarding Federal research assistance.

“(2) To increase the probability of long-term growth in the competitively awarded financial assistance that institutions of higher education in eligible States receive from the Federal Government for science and engineering research.

“(c) PROGRAM ACTIVITIES.—In order to achieve the program objectives, the following activities are authorized under the program:

“(1) Competitive award of grants for research and instrumentation to support such research.

“(2) Competitive award of financial assistance for graduate students.

“(3) Any other activities that are determined necessary to further the achievement of the objectives of the program.

“(d) ELIGIBLE STATES.—(1) The Under Secretary of Defense for Acquisition, Technology, and Logistics shall designate which States are eligible States for the purposes of this section.

“(2) The Under Secretary of Defense for Acquisition, Technology, and Logistics shall designate a State as an eligible State if, as determined by the Under Secretary—

“(A) the average annual amount of all Department of Defense obligations for science and engineering research and development that were in effect with institutions of higher education in the State for the three fiscal years preceding the fiscal year for which the designation is effective or for the last three fiscal years for which statistics are available is less than

the amount determined by multiplying 60 percent times the amount equal to $\frac{1}{50}$ of the total average annual amount of all Department of Defense obligations for science and engineering research and development that were in effect with institutions of higher education in the United States for such three preceding or last fiscal years, as the case may be; and

“(B) the State has demonstrated a commitment to developing research bases in the State and to improving science and engineering research and education programs at institutions of higher education in the State.

“(e) COORDINATION WITH SIMILAR FEDERAL PROGRAMS.—(1) The Secretary shall consult with the Director of the National Science Foundation and the Director of the Office of Science and Technology Policy in the planning, development, and execution of the program and shall coordinate the program with the Experimental Program to Stimulate Competitive Research conducted by the National Science Foundation and with similar programs sponsored by other departments and agencies of the Federal Government.

“(2) All solicitations under the Defense Experimental Program to Stimulate Competitive Research may be made to, and all awards may be made through, the State committees established for purposes of the Experimental Program to Stimulate Competitive Research conducted by the National Science Foundation.

“(3) A State committee referred to in paragraph (2) shall ensure that activities carried out in the State of that committee under the Defense Experimental Program to Stimulate Competitive Research are coordinated with the activities carried out in the State under other similar initiatives of the Federal Government to stimulate competitive research.

“(f) STATE DEFINED.—In this section, the term ‘State’ means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.”

DEFENSE LABORATORIES PERSONNEL DEMONSTRATION PROJECTS

Pub. L. 111–84, div. A, title XI, § 1105, Oct. 28, 2009, 123 Stat. 2486, as amended by Pub. L. 113–291, div. A, title XI, § 1103, Dec. 19, 2014, 128 Stat. 3525, provided that:

“(a) DESIGNATION OF LABORATORIES.—Each of the following is hereby designated as a Department of Defense science and technology reinvention laboratory (as described in section 342(b) of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 108 Stat. 2721) [set out below], as amended by section 1114 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001):

“(1) The Aviation and Missile Research Development and Engineering Center.

“(2) The Army Research Laboratory.

“(3) The Medical Research and Materiel Command.

“(4) The Engineer Research and Development Command.

“(5) The Communications-Electronics Command.

“(6) The Soldier and Biological Chemical Command.

“(7) The Naval Sea Systems Command Centers.

“(8) The Naval Research Laboratory.

“(9) The Office of Naval Research.

“(10) The Air Force Research Laboratory.

“(11) The Tank and Automotive Research Development and Engineering Center.

“(12) The Armament Research Development and Engineering Center.

“(13) The Naval Air Warfare Center, Weapons Division.

“(14) The Naval Air Warfare Center, Aircraft Division.

“(15) The Space and Naval Warfare Systems Center, Pacific.

“(16) The Space and Naval Warfare Systems Center, Atlantic.

“(17) The laboratories within the Army Research Development and Engineering Command.

“(18) The Army Research Institute for the Behavioral and Social Sciences.

“(19) The Space and Missile Defense Command Technical Center.

“(b) CONVERSION PROCEDURES.—The Secretary of Defense shall implement procedures to convert the civilian personnel of each Department of Defense science and technology reinvention laboratory, as so designated by subsection (a), from the personnel system which applies as of the date of the enactment of this Act [Oct. 28, 2009] to the personnel system under an appropriate demonstration project (as referred to in such section 342(b)). Any conversion under this subsection—

“(1) shall not adversely affect any employee with respect to pay or any other term or condition of employment;

“(2) shall be consistent with section 4703(f) of title 5, United States Code;

“(3) shall be completed within 18 months after the date of the enactment of this Act; and

“(4) shall not apply to prevailing rate employees (as defined by section 5342(a)(2) of title 5, United States Code) or senior executives (as defined by section 3132(a)(3) of such title).

“(c) LIMITATION.—The science and technology reinvention laboratories, as so designated by subsection (a), may not implement any personnel system, other than a personnel system under an appropriate demonstration project (as referred to in such section 342(b) [set out below]), without prior congressional authorization.”

Pub. L. 110–181, div. A, title XI, § 1107, Jan. 28, 2008, 122 Stat. 357, as amended by Pub. L. 110–417, [div. A], title XI, § 1109, Oct. 14, 2008, 122 Stat. 4618; Pub. L. 111–84, div. A, title X, § 1073(d), Oct. 28, 2009, 123 Stat. 2475; Pub. L. 111–383, div. A, title XI, § 1101(b), Jan. 7, 2011, 124 Stat. 4382; Pub. L. 112–81, div. A, title X, § 1066(b)(2), Dec. 31, 2011, 125 Stat. 1588, provided that:

“(a) REQUIREMENT.—The Secretary of Defense shall take all necessary actions to fully implement and use the authorities provided to the Secretary under section 342(b) of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 108 Stat. 2721) [set out below], as amended by section 1114 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398; 114 Stat. 1654A–315), to carry out personnel management demonstration projects at Department of Defense laboratories designated by section 1105(a) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2486; 10 U.S.C. 2358 note) as Department of Defense science and technology reinvention laboratories.

“(b) PROCESS FOR FULL IMPLEMENTATION.—The Secretary of Defense shall also implement a process and implementation plan to fully utilize the authorities described in subsection (a) to enhance the performance of the missions of the laboratories.

“(c) OTHER LABORATORIES.—Any flexibility available to any demonstration laboratory shall be available for use at any other laboratory designated by section 1105(a) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2486) as a Department of Defense science and technology reinvention laboratory.

“(d) SUBMISSION OF LIST AND DESCRIPTION.—Not later than March 1 of each year, the Secretary of Defense shall submit to Congress a report containing a list and description of the demonstration project notices, amendments, and changes requested by the laboratories during the preceding calendar year. The list shall include all approved and disapproved notices, amendments, and changes, and the reasons for disapproval or delay in approval.

“(e) STATUS REPORTS.—

“(1) IN GENERAL.—The Secretary shall include in each report under subsection (d) the information described in paragraph (2).

“(2) INFORMATION REQUIRED.—Each report under subsection (d) shall describe the following:

“(A) The actions taken by the Secretary of Defense under subsection (a) during the year covered by the report.

“(B) The progress made by the Secretary of Defense during such year in developing and implementing the plan required by subsection (b), including the anticipated date for completion of such plan and a list and description of any issues relating to the development or implementation of such plan.

“(C) With respect to any applications by any Department of Defense laboratories seeking to be designated as a demonstration laboratory or to otherwise obtain any of the personnel flexibilities available to a demonstration laboratory—

“(i) the number of applications that were received, pending, or acted on during such year;

“(ii) the status or disposition of any applications under clause (i), including, in the case of any application on which a final decision was rendered, the laboratory involved, what the laboratory had requested, the decision reached, and the reasons for the decision; and

“(iii) in the case of any applications under clause (i) on which a final decision was not rendered, the date by which a final decision is anticipated.

“(3) DEFINITION.—For purposes of this subsection, the term ‘demonstration laboratory’ means a laboratory designated by the Secretary of Defense under the provisions of section 342(b) of the National Defense Authorization Act for Fiscal Year 1995 [Pub. L. 103-337, set out below] (as cited in subsection (a)).”
 Pub. L. 103-337, div. A, title III, §342(b), Oct. 5, 1994, 108 Stat. 2721, as amended by Pub. L. 106-65, div. A, title XI, §1109, Oct. 5, 1999, 113 Stat. 779; Pub. L. 106-398, §1 [(div. A), title XI, §1114], Oct. 30, 2000, 114 Stat. 1654, 1654A-315, provided that:

“(1) The Secretary of Defense may carry out personnel demonstration projects at Department of Defense laboratories designated by the Secretary as Department of Defense science and technology reinvention laboratories.

“(2)(A) Each personnel demonstration project carried out under the authority of paragraph (1) shall be generally similar in nature to the China Lake demonstration project.

“(B) For purposes of subparagraph (A), the China Lake demonstration project is the demonstration project that is authorized by section 6 of the Civil Service Miscellaneous Amendments Act of 1983 [Pub. L. 98-224, 98 Stat. 49] to be continued at the Naval Weapons Center, China Lake, California, and at the Naval Ocean Systems Center, San Diego, California.

“(3) If the Secretary carries out a demonstration project at a laboratory pursuant to paragraph (1), section 4703 of title 5, United States Code, shall apply to the demonstration project, except that—

“(A) subsection (d) of such section 4703 shall not apply to the demonstration project;

“(B) the authority of the Secretary to carry out the demonstration project is that which is provided in paragraph (1) rather than the authority which is provided in such section 4703; and

“(C) the Secretary shall exercise the authorities granted to the Office of Personnel Management under such section 4703.

“(4) The employees of a laboratory covered by a personnel demonstration project carried out under this section [enacting this note] shall be exempt from, and may not be counted for the purposes of, any constraint or limitation in a statute or regulation in terms of supervisory ratios or maximum number of employees in any specific category or categories of employment that may otherwise be applicable to the employees. The employees shall be managed by the director of the laboratory subject to the supervision of the Under Secretary of Defense for Acquisition, Technology, and Logistics.

“(5) The limitations in section 5373 of title 5, United States Code, do not apply to the authority of the Secretary under this section to prescribe salary schedules and other related benefits.”

INCLUSION OF WOMEN AND MINORITIES IN CLINICAL RESEARCH PROJECTS

Pub. L. 103-160, div. A, title II, §252, Nov. 30, 1993, 107 Stat. 1607, provided that:

“(a) GENERAL RULE.—In conducting or supporting clinical research, the Secretary of Defense shall ensure that—

“(1) women who are members of the Armed Forces are included as subjects in each project of such research; and

“(2) members of minority groups who are members of the Armed Forces are included as subjects of such research.

“(b) WAIVER AUTHORITY.—The requirement in subsection (a) regarding women and members of minority groups who are members of the Armed Forces may be waived by the Secretary of Defense with respect to a project of clinical research if the Secretary determines that the inclusion, as subjects in the project, of women and members of minority groups, respectively—

“(1) is inappropriate with respect to the health of the subjects;

“(2) is inappropriate with respect to the purpose of the research; or

“(3) is inappropriate under such other circumstances as the Secretary of Defense may designate.

“(c) REQUIREMENT FOR ANALYSIS OF RESEARCH.—In the case of a project of clinical research in which women or members of minority groups will under subsection (a) be included as subjects of the research, the Secretary of Defense shall ensure that the project is designed and carried out so as to provide for a valid analysis of whether the variables being tested in the research affect women or members of minority groups, as the case may be, differently than other persons who are subjects of the research.”

UNIVERSITY RESEARCH INITIATIVE SUPPORT PROGRAM

Pub. L. 103-160, div. A, title VIII, §802, Nov. 30, 1993, 107 Stat. 1701, as amended by Pub. L. 104-106, div. A, title II, §275, Feb. 10, 1996, 110 Stat. 241; Pub. L. 104-201, div. A, title II, §263, Sept. 23, 1996, 110 Stat. 2465; Pub. L. 112-239, div. A, title X, §1076(c)(2)(E), Jan. 2, 2013, 126 Stat. 1950, provided that:

“(a) ESTABLISHMENT.—The Secretary of Defense, through the Assistant Secretary of Defense for Research and Engineering, may establish a University Research Initiative Support Program.

“(b) PURPOSE.—Under the program, the Assistant Secretary may award grants and contracts to eligible institutions of higher education to support the conduct of research and development relevant to requirements of the Department of Defense.

“(c) ELIGIBILITY.—An institution of higher education is eligible for a grant or contract under the program if the institution has received less than a total of \$2,000,000 in grants and contracts from the Department of Defense in the two most recent fiscal years for which complete statistics are available when proposals are requested for such grant or contract.

“(d) COMPETITION REQUIRED.—The Assistant Secretary shall use competitive procedures in awarding grants and contracts under the program.

“(e) SELECTION PROCESS.—In awarding grants and contracts under the program, the Assistant Secretary shall use a merit-based selection process that is consistent with the provisions of section 2361(a) of title 10, United States Code.

“(f) REGULATIONS.—The Assistant Secretary shall prescribe regulations for carrying out the program.

“(g) FUNDING.—Of the amounts authorized to be appropriated under section 201 [107 Stat. 1583], \$20,000,000 shall be available for the University Research Initiative Support Program.”

INDEPENDENT RESEARCH AND DEVELOPMENT; BID AND PROPOSAL COSTS; NEGOTIATION OF ADVANCE AGREEMENTS WITH CONTRACTORS; ANNUAL REPORT TO CONGRESS

Pub. L. 91-441, title II, §203, Oct. 7, 1970, 84 Stat. 906, as amended by Pub. L. 96-342, title II, §208, Sept. 8, 1980,

94 Stat. 1081, provided that no funds authorized to be appropriated to Department of Defense by this or any other Act were to be used to finance independent research and development or bid and proposal costs unless such work had, in opinion of Secretary of Defense, potential relationship to military functions or operations, and advance agreements regarding payment for such work had been negotiated, prior to repeal by Pub. L. 101-510, div. A, title VIII, §824(b), Nov. 5, 1990, 104 Stat. 1604. See section 2372 of this title.

RELATIONSHIP OF RESEARCH PROJECTS OR STUDIES TO
MILITARY FUNCTION OR OPERATION

Pub. L. 91-441, title II, §204, Oct. 7, 1970, 84 Stat. 908, which provided that no funds authorized to be appropriated to the Department of Defense by this or any other Act may be used to finance any research project or study unless such project or study has, in the opinion of the Secretary of Defense, a potential relationship to a military function or operation, was repealed and restated in subsec. (b) of this section by Pub. L. 100-370, §1(g)(3)(C), (5), July 19, 1988, 102 Stat. 847.

HERBICIDES AND DEFOLIATION PROGRAM; COMPREHENSIVE STUDY AND INVESTIGATION; REPORT BY JANUARY 31, 1972; TRANSMITTAL TO PRESIDENT AND CONGRESS BY MARCH 1, 1972

Pub. L. 91-441, title V, §506(c), Oct. 7, 1970, 84 Stat. 913, directed Secretary of Defense to enter into appropriate arrangements with National Academy of Sciences to conduct a comprehensive study and investigation to determine (A) ecological and physiological dangers inherent in use of herbicides, and (B) ecological and physiological effects of defoliation program carried out by Department of Defense in South Vietnam, with a report on the study to be transmitted to President and Congress by Mar. 1, 1972.

CAMPUSES BARRING MILITARY RECRUITERS; CESSATION OF PAYMENTS; NOTIFICATION OF SECRETARY OF DEFENSE

Pub. L. 92-436, title VI, §606, Sept. 29, 1972, 86 Stat. 740, provided that:

“(a) No part of the funds appropriated pursuant to this or any other Act for the Department of Defense or any of the Armed Forces may be used at any institution of higher learning if the Secretary of Defense or his designee determines that recruiting personnel of any of the Armed Forces of the United States are being barred by the policy of such institution from the premises of the institution: except in a case where the Secretary of the service concerned certifies to the Congress in writing that a specific course of instruction is not available at any other institution of higher learning and furnishes to the Congress the reasons why such course of instruction is of vital importance to the security of the United States.

“(b) The prohibition made by subsection (a) of this section as it applies to research and development funds shall not apply if the Secretary of Defense or his designee determines that the expenditure is a continuation or a renewal of a previous program with such institution which is likely to make a significant contribution to the defense effort.

“(c) The Secretaries of the military departments shall furnish to the Secretary of Defense or his designee within 60 days after the date of enactment of this Act [Sept. 29, 1972] and each January 31 and June 30 thereafter the names of any institution of higher learning which the Secretaries determine on such dates are affected by the prohibitions contained in this section.”

Similar provisions were contained in the following prior authorization acts:

Pub. L. 92-156, title V, §502, Nov. 17, 1971, 85 Stat. 427.

Pub. L. 91-441, title V, §510, Oct. 7, 1970, 84 Stat. 914.

FEDERAL CONTRACT RESEARCH CENTERS; OFFICERS’
COMPENSATION; NOTIFICATION TO CONGRESS

Pub. L. 91-121, title IV, §407, Nov. 19, 1969, 83 Stat. 208, related to restrictions on use of appropriations for com-

pensation of officers and employees of Federal contract research centers, and notice requirements respecting such payments, prior to repeal by Pub. L. 96-107, title VIII, §819(c), Nov. 9, 1979, 93 Stat. 819. See section 2359 of this title.

§2359. Science and technology programs to be conducted so as to foster the transition of science and technology to higher levels of research, development, test, and evaluation

(a) **POLICY.**—Each official specified in subsection (b) shall ensure that the management and conduct of the science and technology programs under the authority of that official are carried out in a manner that will foster the transition of science and technology to higher levels of research, development, test, and evaluation.

(b) **COVERED OFFICIALS.**—Subsection (a) applies to the following officials of the Department of Defense:

(1) The Under Secretary of Defense for Acquisition, Technology, and Logistics.

(2) The Secretary of each military department.

(3) The Director of the Defense Advanced Research Projects Agency.

(4) The directors and heads of other offices and agencies of the Department of Defense with assigned research, development, test, and evaluation responsibilities.

(Added Pub. L. 106-398, §1 [[div. A], title IX, §904(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A-225.)

PRIOR PROVISIONS

A prior section 2359, added Pub. L. 96-107, title VIII, §819(a)(1), Nov. 9, 1979, 93 Stat. 818, related to reports on salaries of officers of Federal contract research centers, prior to repeal by Pub. L. 101-510, div. A, title XIII, §1322(a)(5), Nov. 5, 1990, 104 Stat. 1671.

PROOF OF CONCEPT COMMERCIALIZATION PILOT
PROGRAM

Pub. L. 113-66, div. A, title XVI, §1603, Dec. 26, 2013, 127 Stat. 944, as amended by Pub. L. 113-291, div. A, title VIII, §818, Dec. 19, 2014, 128 Stat. 3432, provided that:

“(a) **PILOT PROGRAM.**—The Secretary of Defense, acting through the Assistant Secretary of Defense for Research and Engineering and the Secretary of each military department, may establish and implement a pilot program, to be known as the ‘Proof of Concept Commercialization Pilot Program’, in accordance with this section.

“(b) **PURPOSE.**—The purpose of the pilot program is to accelerate the commercialization of basic research innovations from qualifying institutions.

“(c) **AWARDS.**—

“(1) **IN GENERAL.**—Under the pilot program, the Secretary shall make financial awards to qualifying institutions in accordance with this subsection.

“(2) **COMPETITIVE, MERIT-BASED PROCESS.**—An award under the pilot program shall be made using a competitive, merit-based process.

“(3) **ELIGIBILITY.**—A qualifying institution shall be eligible for an award under the pilot program if the institution agrees to—

“(A) use funds from the award for the uses specified in paragraph (5); and

“(B) oversee the use of the funds through—

“(i) rigorous review of commercialization potential or military utility of technologies, including through use of outside expertise;

“(ii) technology validation milestones focused on market feasibility;

“(iii) simple reporting on program progress; and

“(iv) a process to reallocate funding from poor performing projects to those with more potential.”

“(4) CRITERIA.—An award may be made under the pilot program to a qualifying institution in accordance with the following criteria:

“(A) The extent to which a qualifying institution—

“(i) has an established and proven technology transfer or commercialization office and has a plan for engaging that office in the program’s implementation or has outlined an innovative approach to technology transfer that has the potential to increase or accelerate technology transfer outcomes and can be adopted by other qualifying institutions;

“(ii) can assemble a project management board comprised of industry, start-up, venture capital, technical, financial, and business experts;

“(iii) has an intellectual property rights strategy or office; and

“(iv) demonstrates a plan for sustainability beyond the duration of the funding from the award.

“(B) Such other criteria as the Secretary determines necessary.

“(5) USE OF AWARD.—

“(A) IN GENERAL.—Subject to subparagraph (B), the funds from an award may be used to evaluate the commercial potential of existing discoveries, including activities that contribute to determining a project’s commercialization path, including technical validations, market research, clarifying intellectual property rights, and investigating commercial and business opportunities.

“(B) LIMITATIONS.—

“(i) The amount of an award may not exceed \$1,000,000 a year.

“(ii) Funds from an award may not be used for basic research, or to fund the acquisition of research equipment or supplies unrelated to commercialization activities.

“(d) REPORT.—Not later than one year after the establishment of the pilot program, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] and to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report evaluating the effectiveness of the activities of the pilot program. The report shall include—

“(1) a detailed description of the pilot program;

“(2) an accounting of the funds used in the pilot program;

“(3) a detailed description of the institutional selection process;

“(4) a detailed compilation of results achieved by the pilot program; and

“(5) an analysis of the program’s effectiveness, with data supporting the analysis.

“(e) QUALIFYING INSTITUTION DEFINED.—In this section, the term ‘qualifying institution’ means a non-profit institution, as defined in section 4(3) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3703(3)), or a Federal laboratory, as defined in section 4(4) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3703(4)).

“(f) LIMITATION AND USE OF FUNDS.—Not more than \$5,000,000 may be obligated or expended to conduct the pilot program under this section. The Secretary of a military department may use basic research funds, or other funds considered appropriate by the Secretary, to conduct the pilot program within the military department concerned.

“(g) TERMINATION.—The pilot program conducted under this section shall terminate on September 30, 2019.”

DEFENSE RESEARCH AND DEVELOPMENT RAPID INNOVATION PROGRAM

Pub. L. 111-383, div. A, title X, § 1073, Jan. 7, 2011, 124 Stat. 4366, as amended by Pub. L. 114-92, div. A, title II, § 216, Nov. 25, 2015, 129 Stat. 769, provided that:

“(a) PROGRAM ESTABLISHED.—The Secretary of Defense shall establish a competitive, merit-based program to accelerate the fielding of technologies developed pursuant to phase II Small Business Innovation Research Program projects, technologies developed by the defense laboratories, and other innovative technologies (including dual use technologies). The purpose of this program is to stimulate innovative technologies and reduce acquisition or lifecycle costs, address technical risks, improve the timeliness and thoroughness of test and evaluation outcomes, and rapidly insert such products directly in support of primarily major defense acquisition programs, but also other defense acquisition programs that meet critical national security needs.

“(b) GUIDELINES.—Not later than 180 days after the date of the enactment of this Act [Jan. 7, 2011], the Secretary shall issue guidelines for the operation of the program. At a minimum such guidance shall provide for the following:

“(1) The issuance of an annual broad agency announcement or the use of any other competitive or merit-based processes by the Department of Defense for candidate proposals in support of defense acquisition programs as described in subsection (a).

“(2) The review of candidate proposals by the Department of Defense and by each military department and the merit-based selection of the most promising cost-effective proposals for funding through contracts, cooperative agreements, and other transactions for the purposes of carrying out the program.

“(3) The total amount of funding provided to any project under the program shall not exceed \$3,000,000, unless the Secretary, or the Secretary’s designee, approves a larger amount of funding for the project.

“(4) No project shall receive more than a total of two years of funding under the program, unless the Secretary, or the Secretary’s designee, approves funding for any additional year.

“(5) Mechanisms to facilitate transition of follow-on or current projects carried out under the program into defense acquisition programs, through the use of the authorities of section 819 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84; 10 U.S.C. 2302 note) or such other authorities as may be appropriate to conduct further testing, low rate production, or full rate production of technologies developed under the program.

“(6) Projects are selected using merit-based selection procedures and the selection of projects is not subject to undue influence by Congress or other Federal agencies.

“(c) TREATMENT PURSUANT TO CERTAIN CONGRESSIONAL RULES.—Nothing in this section shall be interpreted to require or enable any official of the Department of Defense to provide funding under this section to any earmark as defined pursuant to House Rule XXI, clause 9, or any congressionally directed spending item as defined pursuant to Senate Rule XLIV, paragraph 5.

“(d) FUNDING.—Subject to the availability of appropriations for such purpose, the amounts authorized to be appropriated for research, development, test, and evaluation for each of fiscal years 2011 through 2023 may be used for any such fiscal year for the program established under subsection (a).

“(e) TRANSFER AUTHORITY.—The Secretary may transfer funds available for the program to the research, development, test, and evaluation accounts of a military department, defense agency, or the unified combatant command for special operations forces pursuant to a proposal, or any part of a proposal, that the Secretary determines would directly support the purposes of the program. The transfer authority provided in this subsection is in addition to any other transfer authority available to the Department of Defense.

“(f) TERMINATION.—The authority to carry out a program under this section shall terminate on September 30, 2023. Any amounts made available for the program that remain available for obligation on the date the program terminates may be transferred under sub-

section (e) during the 180-day period beginning on the date of the termination of the program.”

[§ 2359a. Repealed. Pub. L. 112–81, div. A, title II, § 251(a)(1), Dec. 31, 2011, 125 Stat. 1347]

Section, added Pub. L. 107–314, div. A, title II, § 242(a)(1), Dec. 2, 2002, 116 Stat. 2494; amended Pub. L. 109–163, div. A, title II, § 255(a), Jan. 6, 2006, 119 Stat. 3180; Pub. L. 109–364, div. A, title X, § 1071(a)(2), Oct. 17, 2006, 120 Stat. 2398; Pub. L. 110–181, div. A, title II, § 233, Jan. 28, 2008, 122 Stat. 46; Pub. L. 110–417, [div. A], title II, § 253(b), Oct. 14, 2008, 122 Stat. 4402, related to Technology Transition Initiative.

EFFECTIVE DATE OF REPEAL

Pub. L. 112–81, div. A, title II, § 251(b), Dec. 31, 2011, 125 Stat. 1347, provided that: “The amendments made by subsection (a) [repealing this section] shall take effect on October 1, 2013.”

§ 2359b. Defense Acquisition Challenge Program

(a) **PROGRAM REQUIRED.**—(1) The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition, Technology, and Logistics, shall carry out a program to provide opportunities for the increased introduction of innovative and cost-saving technology in acquisition programs of the Department of Defense.

(2) The program, to be known as the Defense Acquisition Challenge Program (hereinafter in this section referred to as the “Challenge Program”), shall provide any person or activity within or outside the Department of Defense with the opportunity to propose alternatives, to be known as challenge proposals, at the component, subsystem, or system level of an existing Department of Defense acquisition program that would result in improvements in performance, affordability, manufacturability, or operational capability of that acquisition program.

(b) **PANELS.**—The Under Secretary shall establish one or more panels of highly qualified scientists and engineers (hereinafter in this section referred to as “Panels”) to provide preliminary evaluations of challenge proposals under subsection (c).

(c) **PRELIMINARY EVALUATION BY PANELS.**—(1) Under procedures prescribed by the Under Secretary, a person or activity within or outside the Department of Defense may submit challenge proposals to a Panel, through the unsolicited proposal process or in response to a broad agency announcement.

(2) The Under Secretary shall establish procedures pursuant to which appropriate officials of the Department of Defense may identify proposals submitted through the unsolicited proposal process as challenge proposals. The procedures shall provide for the expeditious referral of such proposals to a Panel for preliminary evaluation under this subsection.

(3) The Under Secretary shall issue on an annual basis not less than one such broad agency announcement inviting interested parties to submit challenge proposals. Such announcements may also identify particular technology areas and acquisition programs that will be given priority in the evaluation of challenge proposals.

(4)(A) The Under Secretary shall establish procedures for the prompt issuance of a solicitation for challenge proposals addressing—

(i) any acquisition program for which, since the last such announcement, the Secretary concerned has determined under section 2433(d) of this title that the program’s acquisition unit cost or procurement unit cost has increased by a percentage equal to or greater than the critical cost growth threshold for the program (in this section referred to as a “critical cost growth threshold breach”); and

(ii) any design, engineering, manufacturing, or technology integration issues, in accordance with the assessment required by section 2433(e)(2)(A) of this title, that have contributed significantly to the cost growth of such program.

(B) A solicitation under this paragraph may be included in a broad agency announcement issued pursuant to paragraph (3) as long as the broad agency announcement is released in an expeditious manner following the determination of the Secretary concerned that a critical cost growth threshold breach has occurred with respect to a major defense acquisition program.

(5) Under procedures established by the Under Secretary, a Panel shall carry out a preliminary evaluation of each challenge proposal submitted in response to a broad agency announcement, or submitted through the unsolicited proposal process and identified as a challenge proposal in accordance with paragraph (2), to determine each of the following:

(A) Whether the challenge proposal has merit.

(B) Whether the challenge proposal is likely to result in improvements in performance, affordability, manufacturability, or operational capability at the component, subsystem, or system level of an acquisition program.

(C) Whether the challenge proposal could be implemented in the acquisition program rapidly, at an acceptable cost, and without unacceptable disruption to the acquisition program.

(6) The Under Secretary—

(A) may establish procedures to ensure that the Challenge Program does not become an avenue for the repetitive submission of proposals that have been previously reviewed and found not to have merit; and

(B) may establish procedures to ensure that the Challenge Program establishes appropriate priorities for proposals from businesses that are not major contractors with the Department of Defense.

(7) If a Panel determines that a challenge proposal satisfies each of the criteria specified in paragraph (5), the person or activity submitting that challenge proposal shall be provided an opportunity to submit such challenge proposal for a full review and evaluation under subsection (d).

(d) **FULL REVIEW AND EVALUATION.**—(1) Under procedures prescribed by the Under Secretary, for each challenge proposal submitted for a full review and evaluation as provided in subsection (c)(7), the office carrying out the acquisition program to which the proposal relates shall, in consultation with the prime system contractor carrying out such program, conduct a full review and evaluation of the proposal.

(2) The full review and evaluation shall, independent of the determination of a Panel under subsection (c)(5), determine each of the matters specified in subparagraphs (A), (B), and (C) of such subsection. The full review and evaluation shall also include—

(A) an assessment of the cost of adopting the challenge proposal and implementing it in the acquisition program; and

(B) consideration of any intellectual property issues associated with the challenge proposal.

(e) ACTION UPON FAVORABLE FULL REVIEW AND EVALUATION.—(1) Under procedures prescribed by the Under Secretary, each challenge proposal determined under a full review and evaluation to satisfy each of the criteria specified in subsection (c)(5) with respect to an acquisition program shall be considered by the office carrying out the applicable acquisition program and the prime system contractor for incorporation into the acquisition program as a new technology insertion at the component, subsystem, or system level.

(2) The Under Secretary shall encourage the adoption of each challenge proposal referred to in paragraph (1) by providing suitable incentives to the office carrying out the acquisition program and the prime system contractor carrying out such program.

(3) In the case of a challenge proposal submitted in response to a solicitation issued as a result of a critical cost growth threshold breach that is determined under full review and evaluation to satisfy each of the criteria specified in subsection (c)(5), the Under Secretary shall establish guidelines for covering the costs of the challenge proposal. If appropriate, such guidelines shall not be restricted to funding provided by the Defense Acquisition Challenge Program, but shall also consider alternative funding sources, such as the acquisition program with respect to which the breach occurred.

(f) ACTION UPON UNFAVORABLE FULL REVIEW AND EVALUATION.—Under procedures prescribed by the Under Secretary, if a challenge proposal is determined by a Panel to satisfy each of the criteria specified in subsection (c)(5), but is not determined under a full review and evaluation to satisfy such criteria, the following provisions apply:

(1) The office carrying out the full review and evaluation shall provide to the Panel that conducted the preliminary evaluation a statement containing a summary of the rationale for the unfavorable evaluation.

(2) If the Panel disagrees with the rationale provided under paragraph (1), the Panel may return the challenge proposal to the office for further consideration.

(g) ACCESS TO TECHNICAL RESOURCES.—(1) Under procedures established by the Under Secretary, the technical resources of the laboratories, research, development, and engineering centers, test and evaluation activities, and other elements of the Department may be called upon to support the activities of the Challenge Program.

(2) Funds available to carry out this program may be used to compensate such laboratories,

centers, activities, and elements for technical assistance provided to a Panel pursuant to paragraph (1).

(h) CONFLICTS OF INTEREST AND CONFIDENTIALITY.—In carrying out each preliminary evaluation under subsection (c) and full review under subsection (d), the Under Secretary shall ensure the elimination of conflicts of interest and that the identity of any person or activity submitting a challenge proposal is not disclosed outside the Federal Government, prior to contract award, without the consent of the person or activity. For purposes of the proceeding sentence, the term “Federal Government” includes both employees of the Federal Government and employees of Federal Government contractors providing advisory and assistance services as described in part 37 of the Federal Acquisition Regulation.

(i) LIMITATION ON USE OF FUNDS.—Funds made available for the Challenge Program may be used only for activities authorized by this section, and not for implementation of challenge proposals.

(j) SYSTEM DEFINED.—In this section, the term “system”—

(1) means—

(A) the organization of hardware, software, material, facilities, personnel, data, and services needed to perform a designated function with specified results (such as the gathering of specified data, its processing, and its delivery to users); or

(B) a combination of two or more inter-related pieces (or sets) of equipment arranged in a functional package to perform an operational function or to satisfy a requirement; and

(2) includes a major system (as defined in section 2302(5) of this title).

(k) PILOT PROGRAM FOR PROGRAMS OTHER THAN MAJOR DEFENSE ACQUISITION PROGRAMS.—

(1) IN GENERAL.—The Under Secretary of Defense for Acquisition, Technology, and Logistics shall carry out a pilot program to expand the use of the authority provided in this section to provide opportunities for the introduction of innovative and cost-saving approaches to programs other than major defense acquisition programs through the submission, review, and implementation, where appropriate, of qualifying proposals.

(2) QUALIFYING PROPOSALS.—For purposes of this subsection, a qualifying proposal is an offer to supply a nondevelopmental item that—

(A) is evaluated as achieving a level of performance that is at least equal to the level of performance of an item being procured under a covered acquisition program and as providing savings in excess of 15 percent after considering all costs to the Government of implementing such proposal; or

(B) is evaluated as achieving a level of performance that is significantly better than the level of performance of an item being procured under a covered acquisition program without any increase in cost to the Government.

(3) REVIEW PROCEDURES.—The Under Secretary shall adopt modifications as may be

needed to the procedures applicable to the Challenge Program to provide for Department of Defense review of, and action on, qualifying proposals. Such procedures shall include, at a minimum, the issuance of a broad agency announcement inviting interested parties to submit qualifying proposals in areas of interest to the Department.

(4) DEFINITIONS.—In this subsection:

(A) NONDEVELOPMENTAL ITEM.—The term “nondevelopmental item” has the meaning given that term in section 110 of title 41.

(B) COVERED ACQUISITION PROGRAM.—The term “covered acquisition program” means any acquisition program of the Department of Defense other than a major defense acquisition program, but does not include any contract awarded under an exception to competitive acquisition authorized by the Small Business Act (15 U.S.C. 631 et seq.).

(C) LEVEL OF PERFORMANCE.—The term “level of performance”, with respect to a nondevelopmental item, means the extent to which the item demonstrates required item functional characteristics.

(5) SUNSET.—The authority to carry out the pilot program under this subsection shall terminate on January 7, 2016.

(Added Pub. L. 107-314, div. A, title II, §243(a), Dec. 2, 2002, 116 Stat. 2495; amended Pub. L. 109-364, div. A, title II, §213(b), (d)–(g), Oct. 17, 2006, 120 Stat. 2121–2123; Pub. L. 110-417, [div. A], title VIII, §821, Oct. 14, 2008, 122 Stat. 4531; Pub. L. 111-383, div. A, title VIII, §827, Jan. 7, 2011, 124 Stat. 4270; Pub. L. 112-239, div. A, title X, §1076(e)(3), Jan. 2, 2013, 126 Stat. 1951; Pub. L. 113-66, div. A, title X, §1091(a)(10), Dec. 26, 2013, 127 Stat. 876; Pub. L. 113-291, div. A, title X, §1071(a)(6), Dec. 19, 2014, 128 Stat. 3504.)

REFERENCES IN TEXT

The Small Business Act, referred to in subsec. (k)(4)(B), is Pub. L. 85-536, §2(1 et seq.), July 18, 1958, 72 Stat. 384, which is classified generally to chapter 14A (§631 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 631 of Title 15 and Tables.

AMENDMENTS

2014—Subsec. (k)(4)(A). Pub. L. 113-291 substituted “section 110 of title 41” for “section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)”.

2013—Subsec. (k)(4)(B). Pub. L. 113-66 inserted period at end.

Subsec. (k)(5). Pub. L. 112-239 substituted “January 7, 2016” for “the date that is five years after the date of the enactment of this Act”.

2011—Subsecs. (j) to (l). Pub. L. 111-383 redesignated subsec. (l) as (j), added subsec. (k), and struck out former subsecs. (j) and (k) which related to annual report and termination of authority, respectively.

2008—Subsec. (l). Pub. L. 110-417 added subsec. (l).

2006—Subsec. (c)(4), (5). Pub. L. 109-364, §213(b)(1), added par. (4) and redesignated former par. (4) as (5). Former par. (5) redesignated (6).

Subsec. (c)(6). Pub. L. 109-364, §213(b)(1)(A), (d), redesignated par. (5) as (6) and amended it generally. Prior to amendment, par. (6) read as follows: “The Under Secretary may establish procedures to ensure that the Challenge Program does not become an avenue for the repetitive submission of proposals that have been previously reviewed and found not to have merit.” Former par. (6) redesignated (7).

Subsec. (c)(7). Pub. L. 109-364, §213(b)(1)(A), (g)(1), redesignated par. (6) as (7) and substituted “paragraph (5)” for “paragraph (4)”.

Subsec. (d)(1). Pub. L. 109-364, §213(g)(2), substituted “subsection (c)(7)” for “subsection (c)(6)”.

Subsec. (d)(2). Pub. L. 109-364, §213(g)(3), substituted “subsection (c)(5)” for “subsection (c)(4)” in introductory provisions.

Subsec. (e)(1). Pub. L. 109-364, §213(g)(4), substituted “subsection (c)(5)” for “subsection (c)(4)”.

Subsec. (e)(3). Pub. L. 109-364, §213(b)(2), added par. (3).

Subsecs. (f), (g). Pub. L. 109-364, §213(b)(3), added subsec. (f) and redesignated former subsec. (f) as (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 109-364, §213(b)(3)(A), (e), redesignated subsec. (g) as (h), substituted “Conflicts of Interest and Confidentiality” for “Elimination of Conflicts of Interest” in heading, substituted “conflicts of interest and that the identity of any person or activity submitting a challenge proposal is not disclosed outside the Federal Government, prior to contract award, without the consent of the person or activity” for “conflicts of interest”, and inserted at end “For purposes of the proceeding sentence, the term ‘Federal Government’ includes both employees of the Federal Government and employees of Federal Government contractors providing advisory and assistance services as described in part 37 of the Federal Acquisition Regulation.” Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 109-364, §213(b)(3)(A), redesignated subsec. (h) as (i). Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 109-364, §213(b)(3)(A), (4), redesignated subsec. (i) as (j) and substituted “The report shall also include a list of each challenge proposal that was determined by a Panel to satisfy each of the criteria specified in subsection (c)(5), but was not determined under a full review and evaluation to satisfy such criteria, together with a detailed rationale for the Department’s determination that such criteria were not satisfied” for “No report is required for a fiscal year in which the Challenge Program is not carried out”. Former subsec. (j) redesignated (k).

Subsec. (k). Pub. L. 109-364, §213(b)(3)(A), (f), redesignated subsec. (j) as (k) and substituted “2012” for “2007”.

§ 2360. Research and development laboratories: contracts for services of university students

(a) Subject to the availability of appropriations for such purpose, the Secretary of Defense may procure by contract under the authority of this section the temporary or intermittent services of students at institutions of higher learning for the purpose of providing technical support at defense research and development laboratories. Such contracts may be made directly with such students or with nonprofit organizations employing such students.

(b) Students providing services pursuant to a contract made under subsection (a) shall be considered to be employees for the purposes of chapter 81 of title 5, relating to compensation for work injuries, and to be employees of the government for the purposes of chapter 171 of title 28, relating to tort claims. Such students who are not otherwise employed by the Federal Government shall not be considered to be Federal employees for any other purpose.

(c) The Secretary of Defense shall prescribe regulations to carry out this section. Such regulations shall include definitions for the purposes of this section of the terms “student”, “institution of higher learning”, and “nonprofit organization”.

(Added Pub. L. 97-86, title VI, §603(a), Dec. 1, 1981, 95 Stat. 1110.)

§ 2361. Award of grants and contracts to colleges and universities: requirement of competition

(a) The Secretary of Defense may not make a grant or award a contract to a college or university for the performance of research and development, or for the construction of any research or other facility, unless—

(1) in the case of a grant, the grant is made using competitive procedures; and

(2) in the case of a contract, the contract is awarded in accordance with section 2304 of this title (other than pursuant to subsection (c)(5) of that section).

(b)(1) A provision of law may not be construed as modifying or superseding the provisions of subsection (a), or as requiring funds to be made available by the Secretary of Defense to a particular college or university by grant or contract, unless that provision of law—

(A) specifically refers to this section;

(B) specifically states that such provision of law modifies or supersedes the provisions of this section; and

(C) specifically identifies the particular college or university involved and states that the grant to be made or the contract to be awarded, as the case may be, pursuant to such provision of law is being made or awarded in contravention of subsection (a).

(2) A grant may not be made, or a contract awarded, pursuant to a provision of law that authorizes or requires the making of the grant, or the awarding of the contract, in a manner that is inconsistent with subsection (a) until—

(A) the Secretary of Defense submits to Congress a notice in writing of the intent to make the grant or award the contract; and

(B) a period of 180 days has elapsed after the date on which the notice is received by Congress.

(Added Pub. L. 100-456, div. A, title II, §220(a), Sept. 29, 1988, 102 Stat. 1940; amended Pub. L. 101-189, div. A, title II, §252(a), (b)(1), (c)(1), Nov. 29, 1989, 103 Stat. 1404, 1405; Pub. L. 101-510, div. A, title XIII, §1311(4), Nov. 5, 1990, 104 Stat. 1669; Pub. L. 103-35, title II, §201(g)(5), May 31, 1993, 107 Stat. 100; Pub. L. 103-160, div. A, title VIII, §821(b), Nov. 30, 1993, 107 Stat. 1704; Pub. L. 103-337, div. A, title VIII, §813, Oct. 5, 1994, 108 Stat. 2816; Pub. L. 104-106, div. A, title II, §264, title XV, §1502(a)(1), Feb. 10, 1996, 110 Stat. 237, 502; Pub. L. 104-201, div. A, title II, §265, Sept. 23, 1996, 110 Stat. 2466.)

PRIOR PROVISIONS

A prior section 2361 was renumbered section 2351 of this title.

AMENDMENTS

1996—Subsec. (c). Pub. L. 104-201 struck out subsec. (c) which read as follows:

“(1) The Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives an annual report on the use of competitive procedures for the award of research and development contracts, and the award of construction contracts, to colleges and universities. Each such report shall include—

“(A) a list of each college and university that, during the period covered by the report, received more

than \$1,000,000 in such contracts through the use of procedures other than competitive procedures; and

“(B) the cumulative amount of such contracts received during that period by each such college and university.

“(2) Each report under paragraph (1) shall cover the preceding fiscal year and shall be submitted not later than February 1 of the fiscal year after the fiscal year covered by the report.”

Subsec. (c)(1). Pub. L. 104-106, §1502(a)(1), substituted “Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives” for “Committees on Armed Services of the Senate and House of Representatives”.

Subsec. (c)(2). Pub. L. 104-106, §264, substituted “preceding fiscal year” for “preceding calendar year” and “the fiscal year after the fiscal year” for “the year after the year”.

1994—Subsec. (c). Pub. L. 103-337 added subsec. (c).

1993—Subsec. (b)(2). Pub. L. 103-35 substituted “inconsistent” for “inconsist”.

Subsec. (c). Pub. L. 103-160 struck out subsec. (c) which read as follows:

“(1) The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives an annual report on the use of competitive procedures for the award of research and development contracts, and the award of construction contracts, to colleges and universities. Each such report shall include—

“(A) a list of each college and university that, during the period covered by the report, received more than \$1,000,000 in such contracts through the use of procedures other than competitive procedures; and

“(B) the cumulative amount of such contracts received during that period by each such college and university.

“(2) The reports under paragraph (1) shall cover the preceding calendar year and shall be submitted not later than February 1 of the year after the year covered by the report.

“(3) A report is not required under paragraph (1) for any period beginning after December 31, 1993.”

1990—Subsec. (c)(1). Pub. L. 101-510, §1311(4)(A), substituted “an annual report” for “a semiannual report” in introductory provisions.

Subsec. (c)(2). Pub. L. 101-510, §1311(4)(B), substituted “the preceding calendar year and shall be submitted not later than February 1 of the year after the year covered by the report” for “the six-month periods ending on June 30 and December 31 of each year. Each such report shall be submitted within 30 days after the end of the period covered by the report”.

1989—Subsec. (a). Pub. L. 101-189, §252(a), substituted “unless—” for “unless” and pars. (1) and (2) for “the grant or contract is made or awarded using competitive procedures.”

Subsec. (b). Pub. L. 101-189, §252(b)(1), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “A provision of law enacted after the date of the enactment of this section may not be construed as modifying or superseding the provisions of subsection (a) unless that provision of law specifically refers to this section and specifically states that such provision of law modifies or supersedes the provisions of this section.”

Subsec. (c). Pub. L. 101-189, §252(c)(1), added subsec. (c).

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103-160, div. A, title VIII, §821(b), Nov. 30, 1993, 107 Stat. 1704, provided that the amendment made by that section is effective Feb. 1, 1994.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101-189, div. A, title II, §252(b)(2), Nov. 29, 1989, 103 Stat. 1405, provided that: “Subsection (b) of section 2361 of title 10, United States Code, as amended by paragraph (1), applies with respect to any provision of law enacted after September 30, 1989.”

EFFECTIVE DATE

Pub. L. 100-456, div. A, title II, § 220(c), Sept. 29, 1988, 102 Stat. 1941, provided that: “The limitation specified in section 2361(a) of title 10, United States Code (as added by subsection (a)), on the authority of the Secretary of Defense to make grants and award contracts shall take effect on October 1, 1989.”

INITIAL REPORT ON USE OF COMPETITIVE PROCEDURES
IN AWARDING CONTRACTS

Pub. L. 101-189, div. A, title II, § 252(c)(2), Nov. 29, 1989, 103 Stat. 1405, required that first report under subsec. (c) of this section cover last six months of 1989 and be submitted not later than Feb. 1, 1990.

§ 2362. Research and educational programs and activities: historically black colleges and universities and minority-serving institutions of higher education

(a) PROGRAM ESTABLISHED.—(1) The Secretary of Defense, acting through the Assistant Secretary of Defense for Research and Engineering and the Secretary of each military department, shall carry out a program to provide assistance to covered educational institutions to assist the Department in defense-related research, development, testing, and evaluation activities.

(2) The Secretary of Defense may not delegate or transfer to an individual outside the Office of the Secretary of Defense the authority regarding the programming or budgeting of the program established by this section that is carried out by the Assistant Secretary of Defense for Research and Engineering.

(b) PROGRAM OBJECTIVE.—The objective of the program established by subsection (a)(1) is to enhance defense-related research and education at covered educational institutions. Such objective shall be accomplished through initiatives designed to—

(1) enhance the research and educational capabilities of such institutions in areas of importance to national defense, as determined by the Secretary;

(2) encourage the participation of such institutions in the research, development, testing, and evaluation programs and activities of the Department of Defense;

(3) increase the number of graduates from such institutions engaged in disciplines important to the national security functions of the Department of Defense, as determined by the Secretary; and

(4) encourage research and educational collaborations between such institutions and other institutions of higher education, Government defense organizations, and the defense industry.

(c) ASSISTANCE PROVIDED.—Under the program established by subsection (a)(1), the Secretary of Defense may provide covered educational institutions with funding or technical assistance, including any of the following:

(1) Support for research, development, testing, evaluation, or educational enhancements in areas important to national defense through the competitive awarding of grants, cooperative agreements, contracts, scholarships, fellowships, or the acquisition of research equipment or instrumentation.

(2) Support to assist in the attraction and retention of faculty in scientific disciplines

important to the national security functions of the Department of Defense.

(3) Establishing partnerships between such institutions and defense laboratories, Government defense organizations, the defense industry, and other institutions of higher education in research, development, testing, and evaluation in areas important to the national security functions of the Department of Defense.

(4) Other such non-monetary assistance as the Secretary finds appropriate to enhance defense-related research, development, testing, and evaluation activities at such institutions.

(d) PRIORITY FOR FUNDING.—The Secretary of Defense may establish procedures under which the Secretary may give priority in providing funding under this section to institutions that have not otherwise received a significant amount of funding from the Department of Defense for research, development, testing, and evaluation programs supporting the national security functions of the Department.

(e) DEFINITION OF COVERED EDUCATIONAL INSTITUTION.—In this section the term “covered educational institution” means—

(1) an institution of higher education eligible for assistance under title III or V of the Higher Education Act of 1965 (20 U.S.C. 1051 et seq.); or

(2) an accredited postsecondary minority institution.

(Added Pub. L. 111-84, div. A, title II, § 252(a), Oct. 28, 2009, 123 Stat. 2242; amended Pub. L. 111-383, div. A, title X, § 1075(b)(32), Jan. 7, 2011, 124 Stat. 4370; Pub. L. 112-81, div. A, title II, § 219, Dec. 31, 2011, 125 Stat. 1335; Pub. L. 112-239, div. A, title X, § 1076(c)(2)(A)(i), Jan. 2, 2013, 126 Stat. 1949.)

REFERENCES IN TEXT

The Higher Education Act of 1965, referred to in subsec. (e)(1), is Pub. L. 89-329, Nov. 8, 1965, 79 Stat. 1219. Titles III and V of the Act are classified generally to subchapters III (§1051 et seq.) and V (§1101 et seq.), respectively, of chapter 28 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

PRIOR PROVISIONS

A prior section 2362, added Pub. L. 99-145, title I, §123(a)(1), Nov. 8, 1985, 99 Stat. 599; amended Pub. L. 99-433, title I, §110(g)(4), Oct. 1, 1986, 100 Stat. 1004; Pub. L. 100-26, §7(k)(2), Apr. 21, 1987, 101 Stat. 284, which related to testing requirements for wheeled or tracked armored vehicles, was repealed by Pub. L. 103-160, div. A, title VIII, §821(a)(3), Nov. 30, 1993, 107 Stat. 1704.

AMENDMENTS

2013—Subsec. (a)(1). Pub. L. 112-239 substituted “Assistant Secretary of Defense for Research and Engineering” for “Director of Defense Research and Engineering”.

2011—Subsec. (a). Pub. L. 112-81, §219(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (b). Pub. L. 112-81, §219(b)(1), substituted “established by subsection (a)(1)” for “established under subsection (a)” in introductory provisions.

Subsec. (c). Pub. L. 112-81, §219(b)(2), substituted “subsection (a)(1)” for “subsection (a)” in introductory provisions.

Subsec. (e)(1). Pub. L. 111-383, §1075(b)(32), substituted “title III or V” for “title III or IV”.

STRATEGIES FOR ENGAGEMENT WITH HISTORICALLY BLACK COLLEGES AND UNIVERSITIES AND MINORITY-SERVING INSTITUTIONS OF HIGHER EDUCATION

Pub. L. 114-92, div. A, title II, §233, Nov. 25, 2015, 129 Stat. 779, provided that:

“(a) BASIC RESEARCH ENTITIES.—

“(1) STRATEGY.—The heads of each basic research entity shall each develop a strategy for how to engage with and support the development of scientific, technical, engineering, and mathematics capabilities of covered educational institutions in carrying out section 2362 of title 10, United States Code.

“(2) ELEMENTS.—Each strategy under paragraph (1) shall include the following:

“(A) Goals and vision for maintaining a credible and sustainable program relating to the engagement and support under the strategy.

“(B) Metrics to enhance scientific, technical, engineering, and mathematics capabilities at covered educational institutions, including with respect to measuring progress toward increasing the success of such institutions to compete for broader research funding sources other than set-aside funds.

“(C) Promotion of mentoring opportunities between covered educational institutions and other research institutions.

“(D) Regular assessment of activities that are used to develop, maintain, and grow scientific, technical, engineering, and mathematics capabilities.

“(E) Inclusion of faculty of covered educational institutions into program reviews, peer reviews, and other similar activities.

“(F) Targeting of undergraduate, graduate, and postgraduate students at covered educational institutions for inclusion into research or internship opportunities within the military department.

“(b) OFFICE OF THE SECRETARY.—The Secretary of Defense shall develop and implement a strategy for how to engage with and support the development of scientific, technical, engineering, and mathematics capabilities of covered educational institutions pursuant to the strategies developed under subsection (a).

“(c) Submission.—

“(1) BASIC RESEARCH ENTITIES.—Not later than 180 days after the date of the enactment of this Act [Nov. 25, 2015], the heads of each basic research entity shall each submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] the strategy developed by the head under subsection (a)(1).

“(2) OFFICE OF THE SECRETARY.—Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees the strategy developed under subsection (b).

“(d) COVERED INSTITUTION DEFINED.—In this section:

“(1) The term ‘basic research entity’ means an entity of the Department of Defense that executes research, development, test, and evaluation budget activity 1 funding, as described in the Department of Defense Financial Management Regulation.

“(2) The term ‘covered educational institution’ has the meaning given that term in section 2362(e) of title 10, United States Code.”

[§ 2363. Repealed. Pub. L. 102-484, div. D, title XLII, §§ 4224(c), 4271(a)(2), Oct. 23, 1992, 106 Stat. 2683, 2695]

Section, added Pub. L. 99-145, title XIV, §1457(a), Nov. 8, 1985, 99 Stat. 762, related to encouragement of technology transfer. See section 2514 of this title.

§ 2364. Coordination and communication of defense research activities and technology domain awareness

(a) COORDINATION OF DEPARTMENT OF DEFENSE RESEARCH, DEVELOPMENT, AND TECHNOLOGICAL DATA.—The Secretary of Defense shall promote, monitor, and evaluate programs for the communication and exchange of research, development, and technological data—

(1) among the Defense research facilities, combatant commands, and other organizations that are involved in developing for the Department of Defense the technological requirements for new items for use by combat forces;

(2) among Defense research facilities and other offices, agencies, and bureaus in the Department that are engaged in related technological matters;

(3) among other research facilities and other departments or agencies of the Federal Government that are engaged in research, development, and technological matters;

(4) among private commercial, research institution, and university entities engaged in research, development, and technological matters potentially relevant to defense on a voluntary basis;

(5) to the extent practicable, to achieve full awareness of scientific and technological advancement and innovation wherever it may occur, whether funded by the Department of Defense, another element of the Federal Government, or other entities; and

(6) through development and distribution of clear technical communications to the public, military operators, acquisition organizations, and civilian and military decision-makers that conveys¹ successes of research and engineering activities supported by the Department and the contributions of such activities to support national needs.

(b) FUNCTIONS OF DEFENSE RESEARCH FACILITIES.—The Secretary of Defense shall ensure, to the maximum extent practicable—

(1) that Defense research facilities are assigned broad mission requirements rather than specific hardware needs;

(2) that appropriate personnel of such facilities are assigned to serve as consultants on component and support system standardization;

(3) that the managers of such facilities have broad latitude to choose research and development projects based on awareness of activities throughout the technology domain, including within the Federal Government, the Department of Defense, public and private research institutions and universities, and the global commercial marketplace;

(4) that technology position and issue papers prepared by Defense research facilities are readily available to all components of the Department of Defense and to contractors who submit bids or proposals for Department of Defense contracts;

(5) that, in order to promote increased consideration of technological issues early in the

¹ So in original. Probably should be “convey”.

development process, any technological assessment made by a Defense research facility shall be provided to the Defense Technical Information Center repository to support acquisition decisions; and

(6) that, in light of Defense research facilities being funded by the public, Defense research facilities are broadly authorized and encouraged to support national technological development goals and support technological missions of other departments and agencies of the Federal Government, when such support is determined by the Secretary of Defense to be in the best interests of the Federal Government.

(c) DEFINITIONS.—In this section, the term “Defense research facility” means a Department of Defense facility which performs or contracts for the performance of—

(1) basic research; or

(2) applied research known as exploratory development.

(Added Pub. L. 99-661, div. A, title II, § 234(c)(1), Nov. 14, 1986, 100 Stat. 3848; amended Pub. L. 100-26, §§ 3(1)(A), 7(a)(9), Apr. 21, 1987, 101 Stat. 273, 278; Pub. L. 100-180, div. A, title XII, § 1231(10)(A), (B), Dec. 4, 1987, 101 Stat. 1160; Pub. L. 104-106, div. A, title VIII, § 805, Feb. 10, 1996, 110 Stat. 390; Pub. L. 113-291, div. A, title II, § 213, Dec. 19, 2014, 128 Stat. 3325; Pub. L. 114-92, div. A, title II, § 214(a), Nov. 25, 2015, 129 Stat. 767.)

AMENDMENTS

2015—Pub. L. 114-92, § 214(a)(3), inserted “and technology domain awareness” after “activities” in section catchline.

Subsec. (a). Pub. L. 114-92, § 214(a)(1), added subsec. (a) and struck out former subsec. (a). Prior to amendment, text read as follows: “The Secretary of Defense shall promote, monitor, and evaluate programs for the communication and exchange of technological data—

“(1) among the Defense research facilities, combatant commands, and other organizations that are involved in developing for the Department of Defense the technological requirements for new items for use by combat forces; and

“(2) among Defense research facilities and other offices, agencies, and bureaus in the Department that are engaged in related technological matters.”

Subsec. (b)(3). Pub. L. 114-92, § 214(a)(2)(A), added par. (3) and struck out former par. (3) which read as follows: “that the managers of such facilities have broad latitude to choose research and development projects;”.

Subsec. (b)(6). Pub. L. 114-92, § 214(a)(2)(B)-(D), added par. (6).

2014—Subsec. (b)(4). Pub. L. 113-291, § 213(1)(A), inserted “and issue” after “technology position” and substituted “components of the Department of Defense” for “combatant commands”.

Subsec. (b)(5). Pub. L. 113-291, § 213(1)(B), substituted “any technological assessment made by a Defense research facility shall be provided to the Defense Technical Information Center repository to support acquisition decisions.” for “any position paper prepared by a Defense research facility on a technological issue relating to a major weapon system, and any technological assessment made by such facility in the case of such component, is made a part of the records considered for the purpose of making acquisition program decisions.”

Subsec. (c). Pub. L. 113-291, § 213(2), struck out “this section:” after “In”, substituted “this section, the term” for “(1) The term”, redesignated subpars. (A) and (B) of former par. (1) as pars. (1) and (2), respectively, and realigned margins, and struck out par. (2) which read as follows: “The term ‘acquisition program deci-

sion’ has the meaning prescribed by the Secretary of Defense in regulations.”

1996—Subsec. (b)(5). Pub. L. 104-106, § 805(1), substituted “acquisition program” for “milestone O, milestone I, and milestone II”.

Subsec. (c)(2) to (4). Pub. L. 104-106, § 805(2), added par. (2) and struck out former pars. (2) to (4) which read as follows:

“(2) The term ‘milestone O decision’ means the decision made within the Department of Defense that there is a mission need for a new major weapon system and that research and development is to begin to meet such need.

“(3) The term ‘milestone I decision’ means the decision by an appropriate official of the Department of Defense selecting a new major weapon system concept and a program for demonstration and validation of such concept.

“(4) The term ‘milestone II decision’ means the decision by an appropriate official of the Department of Defense approving the full-scale development of a new major weapon system.”

1987—Pub. L. 100-26, § 3(1)(A), made technical amendment to directory language of section 234(c)(1) of Pub. L. 99-661, which enacted this section.

Pub. L. 100-180, § 1231(10)(B), substituted “defense” for “Defense” in section catchline.

Subsec. (b)(5). Pub. L. 100-180, § 1231(10)(A), substituted “milestone O, milestone I, and milestone II decisions” for “milestone O, I, and II decisions”.

Subsec. (c)(2). Pub. L. 100-26, § 7(a)(9)(A), substituted “the decision” for “a decision”.

Subsec. (c)(3). Pub. L. 100-26, § 7(a)(9)(B), substituted “the decision by an appropriate official of the Department of Defense selecting” for “[a]/[the] selection by an appropriate official of the Department of Defense of”.

Subsec. (c)(4). Pub. L. 100-26, § 7(a)(9)(C), substituted “the decision by an appropriate official of the Department of Defense approving” for “approval by an appropriate official of the Department of Defense for”.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 3(1)(A) of Pub. L. 100-26 applicable as if included in Pub. L. 99-661 when enacted on Nov. 14, 1986, see section 12(a) of Pub. L. 100-26, set out as a note under section 776 of this title.

PERFORMANCE REVIEW PROCESS

Pub. L. 106-65, div. A, title IX, § 913(b), Oct. 5, 1999, 113 Stat. 720, provided that: “Not later than 180 days after the date of the enactment of this Act [Oct. 5, 1999], the Secretary of Defense shall develop an appropriate performance review process for rating the quality and relevance of work performed by the Department of Defense laboratories. The process shall include customer evaluation and peer review by Department of Defense personnel and appropriate experts from outside the Department of Defense. The process shall provide for rating all laboratories of the Army, Navy, and Air Force on a consistent basis.”

COORDINATION OF HIGH-TEMPERATURE SUPERCONDUCTIVITY RESEARCH AND DEVELOPMENT

Pub. L. 100-180, div. A, title II, § 218(b)(2), Dec. 4, 1987, 101 Stat. 1053, as amended by Pub. L. 100-418, title V, § 5115(c), Aug. 23, 1988, 102 Stat. 1433; Pub. L. 103-160, div. A, title IX, § 904(f), Nov. 30, 1993, 107 Stat. 1729; Pub. L. 106-65, div. A, title IX, § 911(a)(1), Oct. 5, 1999, 113 Stat. 717, provided that: “The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition, Technology, and Logistics, shall—

“(A) coordinate the research and development activities of the Department of Defense relating to high-temperature superconductivity; and

“(B) ensure that such research and development—

“(i) is carried out in coordination with the high-temperature superconductivity research and development activities of the Department of Energy (in-

cluding the national laboratories of the Department of Energy), the National Science Foundation, the National Institute of Standards and Technology, and the National Aeronautics and Space Administration; and

“(ii) complements rather than duplicates such activities.”

COORDINATION OF RESEARCH ACTIVITIES OF
DEPARTMENT OF DEFENSE

Pub. L. 99-661, div. A, title II, §234(a), (b), Nov. 14, 1986, 100 Stat. 3848, provided that:

“(a) PURPOSE.—The purpose of this section is to strengthen coordination among Department of Defense research facilities and other organizations in the Department of Defense.

“(b) FINDINGS.—The Congress finds that centralized coordination of the collection and dissemination of technological data among research facilities and other organizations within the Department of Defense is necessary—

“(1) to ensure that personnel of the Department are currently informed about emerging technology for defense systems; and

“(2) to avoid unnecessary and costly duplication of research staffs and projects.”

§ 2365. Global Research Watch Program

(a) PROGRAM.—The Assistant Secretary of Defense for Research and Engineering shall carry out a Global Research Watch program in accordance with this section.

(b) PROGRAM GOALS.—The goals of the program are as follows:

(1) To monitor and analyze the basic and applied research activities and capabilities of foreign nations and private sector persons in areas of military interest, including allies and competitors.

(2) To provide standards for comparison and comparative analysis of research capabilities of foreign nations and private sector persons in relation to the research capabilities of the United States.

(3) To assist Congress and Department of Defense officials in making investment decisions for research in technical areas where the United States may not be the global leader.

(4) To identify areas where significant opportunities for cooperative research may exist.

(5) To coordinate and promote the international cooperative research and analysis activities of each of the armed forces and Defense Agencies.

(6) To establish and maintain an electronic database on international research capabilities, comparative assessments of capabilities, cooperative research opportunities, and ongoing cooperative programs.

(c) FOCUS OF PROGRAM.—The program shall be focused on research and technologies at a technical maturity level equivalent to Department of Defense basic and applied research programs.

(d) COORDINATION.—(1) The Assistant Secretary shall coordinate the program with the international cooperation and analysis activities of the military departments and Defense Agencies.

(2) The Secretaries of the military departments and the directors of the Defense Agencies shall provide the Assistant Secretary of Defense for Research and Engineering such assistance as the Assistant Secretary may require for purposes of the program.

(3)(A) Funds available to a military department for a fiscal year for monitoring or analyzing the research activities and capabilities of foreign nations may not be obligated or expended until the Assistant Secretary certifies to the Under Secretary of Defense for Acquisition, Technology, and Logistics that the Secretary of such military department has provided the assistance required under paragraph (2).

(B) The limitation in subparagraph (A) shall not be construed to alter or effect the availability to a military department of funds for intelligence activities.

(e) CLASSIFICATION OF DATABASE INFORMATION.—Information in electronic databases of the Global Research Watch program shall be maintained in unclassified form and, as determined necessary by the Assistant Secretary, in classified form in such databases.

(f) TERMINATION.—The requirement to carry out the program under this section shall terminate on September 30, 2025.

(Added Pub. L. 108-136, div. A, title II, §231(a), Nov. 24, 2003, 117 Stat. 1421; amended Pub. L. 109-364, div. A, title II, §232, Oct. 17, 2006, 120 Stat. 2134; Pub. L. 111-84, div. A, title II, §211, Oct. 28, 2009, 123 Stat. 2225; Pub. L. 111-383, div. A, title IX, §901(j)(3), Jan. 7, 2011, 124 Stat. 4324; Pub. L. 112-239, div. A, title X, §1076(c)(2)(B), Jan. 2, 2013, 126 Stat. 1950; Pub. L. 114-92, div. A, title II, §215, Nov. 25, 2015, 129 Stat. 769.)

PRIOR PROVISIONS

A prior section 2365, added Pub. L. 99-500, §101(c) [title X, §909(a)(1), formerly §909(a)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-142, and Pub. L. 99-591, §101(c) [title X, §909(a)(1), formerly §909(a)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-142, redesignated §909(a)(1), Pub. L. 100-26, §4(b), Apr. 21, 1987, 101 Stat. 274; Pub. L. 99-661, div. A, title IX, formerly title IV, §909(a)(1), Nov. 14, 1986, 100 Stat. 3921, renumbered title IX, Pub. L. 100-26, §3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100-26, §5(3)(A), Apr. 21, 1987, 101 Stat. 274; Pub. L. 100-456, div. A, title VIII, §802, Sept. 29, 1988, 102 Stat. 2008, required use of competitive prototype program strategy in development of major weapons systems, prior to repeal by Pub. L. 102-484, div. A, title VIII, §821(c)(1), Oct. 23, 1992, 106 Stat. 2460.

AMENDMENTS

2015—Subsec. (b)(1), (2). Pub. L. 114-92, §215(1), inserted “and private sector persons” after “foreign nations”.

Subsec. (f). Pub. L. 114-92, §215(2), substituted “September 30, 2025” for “September 30, 2015”.

2013—Subsec. (a). Pub. L. 112-239, §1076(c)(2)(B)(i), inserted “of Defense for Research and Engineering” after “The Assistant Secretary”.

Subsec. (d)(3)(A). Pub. L. 112-239, §1076(c)(2)(B)(ii), substituted “Assistant Secretary” for “Director”.

2011—Subsec. (a). Pub. L. 111-383, §901(j)(3)(A), substituted “Assistant Secretary” for “Director of Defense Research and Engineering”.

Subsec. (d)(1). Pub. L. 111-383, §901(j)(3)(B), substituted “Assistant Secretary” for “Director”.

Subsec. (d)(2). Pub. L. 111-383, §901(j)(3)(C), substituted “Assistant Secretary of Defense for Research and Engineering” for “Director of Defense Research and Engineering” and “Assistant Secretary may” for “Director may”.

Subsec. (e). Pub. L. 111-383, §901(j)(3)(D), substituted “Assistant Secretary” for “Director”.

2009—Subsec. (d)(3). Pub. L. 111-84, §211(a), added par. (3).

Subsec. (f). Pub. L. 111-84, §211(b), substituted “2015” for “2011”.

2006—Subsec. (f). Pub. L. 109-364 substituted “2011” for “2006”.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 111-383 effective Jan. 1, 2011, see section 901(p) of Pub. L. 111-383, set out as a note under section 131 of this title.

§ 2366. Major systems and munitions programs: survivability testing and lethality testing required before full-scale production

(a) REQUIREMENTS.—(1) The Secretary of Defense shall provide that—

(A) a covered system may not proceed beyond low-rate initial production until realistic survivability testing of the system is completed in accordance with this section and the report required by subsection (d) with respect to that testing is submitted in accordance with that subsection; and

(B) a major munition program or a missile program may not proceed beyond low-rate initial production until realistic lethality testing of the program is completed in accordance with this section and the report required by subsection (d) with respect to that testing is submitted in accordance with that subsection.

(2) The Secretary of Defense shall provide that a covered product improvement program may not proceed beyond low-rate initial production until—

(A) in the case of a product improvement to a covered system, realistic survivability testing is completed in accordance with this section; and

(B) in the case of a product improvement to a major munitions program or a missile program, realistic lethality testing is completed in accordance with this section.

(b) TEST GUIDELINES.—(1) Survivability and lethality tests required under subsection (a) shall be carried out sufficiently early in the development phase of the system or program (including a covered product improvement program) to allow any design deficiency demonstrated by the testing to be corrected in the design of the system, munition, or missile (or in the product modification or upgrade to the system, munition, or missile) before proceeding beyond low-rate initial production.

(2) The costs of all tests required under that subsection shall be paid from funds available for the system being tested.

(c) WAIVER AUTHORITY.—(1) The Secretary of Defense may waive the application of the survivability and lethality tests of this section to a covered system, munitions program, missile program, or covered product improvement program if the Secretary determines that live-fire testing of such system or program would be unreasonably expensive and impractical and submits a certification of that determination to Congress—

(A) before Milestone B approval for the system or program; or

(B) in the case of a system or program initiated at—

(i) Milestone B, as soon as is practicable after the Milestone B approval; or

(ii) Milestone C, as soon as is practicable after the Milestone C approval.

(2) In the case of a covered system (or covered product improvement program for a covered system), the Secretary may waive the application of the survivability and lethality tests of this section to such system or program and instead allow testing of the system or program in combat by firing munitions likely to be encountered in combat at components, subsystems, and sub-assemblies, together with performing design analyses, modeling and simulation, and analysis of combat data. Such alternative testing may not be carried out in the case of any covered system (or covered product improvement program for a covered system) unless the Secretary certifies to Congress, before the system or program enters system development and demonstration, that the survivability and lethality testing of such system or program otherwise required by this section would be unreasonably expensive and impracticable.

(3) The Secretary shall include with any certification under paragraph (1) or (2) a report explaining how the Secretary plans to evaluate the survivability or the lethality of the system or program and assessing possible alternatives to realistic survivability testing of the system or program.

(4) In time of war or mobilization, the President may suspend the operation of any provision of this section.

(d) REPORTING TO CONGRESS.—(1) At the conclusion of survivability or lethality testing under subsection (a), the Secretary of Defense shall submit a report on the testing to the congressional defense committees. Each such report shall describe the results of the survivability or lethality testing and shall give the Secretary's overall assessment of the testing.

(2) If a decision is made within the Department of Defense to proceed to operational use of a system, or to make procurement funds available for a system, before Milestone C approval of that system, the Secretary of Defense shall submit to the congressional defense committees, as soon as practicable after such decision, the following:

(A) A report describing the status of survivability and live fire testing of that system.

(B) The report required under paragraph (1).

(e) DEFINITIONS.—In this section:

(1) The term “covered system” means—

(A) a vehicle, weapon platform, or conventional weapon system that—

(i) includes features designed to provide some degree of protection to users in combat; and

(ii) is a major system as defined in section 2302(5) of this title; or

(B) any other system or program designated by the Secretary of Defense for purposes of this section.

(2) The term “major munitions program” means—

(A) a munition program for which more than 1,000,000 rounds are planned to be acquired; or

(B) a conventional munitions program that is a major system within the meaning of that term in section 2302(5) of this title.

(3) The term “realistic survivability testing” means, in the case of a covered system

(or a covered product improvement program for a covered system), testing for vulnerability of the system in combat by firing munitions likely to be encountered in combat (or munitions with a capability similar to such munitions) at the system configured for combat, with the primary emphasis on testing vulnerability with respect to potential user casualties and taking into equal consideration the susceptibility to attack and combat performance of the system.

(4) The term “realistic lethality testing” means, in the case of a major munitions program or a missile program (or a covered product improvement program for such a program), testing for lethality by firing the munition or missile concerned at appropriate targets configured for combat.

(5) The term “configured for combat”, with respect to a weapon system, platform, or vehicle, means loaded or equipped with all dangerous materials (including all flammables and explosives) that would normally be on board in combat.

(6) The term “covered product improvement program” means a program under which—

(A) a modification or upgrade will be made to a covered system which (as determined by the Secretary of Defense) is likely to affect significantly the survivability of such system; or

(B) a modification or upgrade will be made to a major munitions program or a missile program which (as determined by the Secretary of Defense) is likely to affect significantly the lethality of the munition or missile produced under the program.

(7) The term “Milestone B approval” means a decision to enter into system development and demonstration pursuant to guidance prescribed by the Secretary of Defense for the management of Department of Defense acquisition programs.

(8) The term “Milestone C approval” means a decision to enter into production and deployment pursuant to guidance prescribed by the Secretary of Defense for the management of Department of Defense acquisition programs.

(Added Pub. L. 99-500, §101(c) [title X, §910(a)(1)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-143, and Pub. L. 99-591, §101(c) [title X, §910(a)(1)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-143; Pub. L. 99-661, div. A, title IX, formerly title IV, §910(a)(1), Nov. 14, 1986, 100 Stat. 3923, renumbered title IX, Pub. L. 100-26, §3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 100-180, div. A, title VIII, §802, title XII, §1231(11), Dec. 4, 1987, 101 Stat. 1123, 1160; Pub. L. 100-456, div. A, title XII, §1233(l)(3), Sept. 29, 1988, 102 Stat. 2058; Pub. L. 101-189, div. A, title VIII, §§802(c)(1)-(4)(A), 804, Nov. 29, 1989, 103 Stat. 1486, 1488; Pub. L. 101-510, div. A, title XIV, §1484(h)(7), Nov. 5, 1990, 104 Stat. 1718; Pub. L. 103-160, div. A, title VIII, §828(d)(2), Nov. 30, 1993, 107 Stat. 1715; Pub. L. 103-355, title III, §3014, Oct. 13, 1994, 108 Stat. 3332; Pub. L. 104-106, div. A, title XV, §1502(a)(18), Feb. 10, 1996, 110 Stat. 504; Pub. L. 106-65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 107-107, div. A, title VIII, §821(a), Dec. 28, 2001, 115 Stat. 1181; Pub. L. 107-314, div. A, title VIII, §818, Dec. 2, 2002, 116

Stat. 2611; Pub. L. 108-136, div. A, title X, §1043(b)(13), Nov. 24, 2003, 117 Stat. 1611; Pub. L. 110-417, [div. A], title II, §251(a), (b), Oct. 14, 2008, 122 Stat. 4400.)

CODIFICATION

Pub. L. 99-591 is a corrected version of Pub. L. 99-500. Pub. L. 99-500, Pub. L. 99-591, and Pub. L. 99-661 added identical sections.

AMENDMENTS

2008—Subsec. (d). Pub. L. 110-417, §251(b), designated existing provisions as par. (1) and added par. (2).

Subsec. (e)(1). Pub. L. 110-417, §251(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “The term ‘covered system’ means a vehicle, weapon platform, or conventional weapon system—

“(A) that includes features designed to provide some degree of protection to users in combat; and

“(B) that is a major system within the meaning of that term in section 2302(5) of this title.”

2003—Subsec. (e)(7) to (9). Pub. L. 108-136 redesignated pars. (8) and (9) as (7) and (8), respectively, and struck out former par. (7) which read as follows: “The term ‘congressional defense committees’ means—

“(A) the Committee on Armed Services and the Committee on Appropriations of the Senate; and

“(B) the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.”

2002—Subsec. (c)(1). Pub. L. 107-314, §818(a), amended par. (1) generally. Prior to amendment par. (1) read as follows: “The Secretary of Defense may waive the application of the survivability and lethality tests of this section to a covered system, munitions program, missile program, or covered product improvement program if the Secretary, before the system or program enters system development and demonstration, certifies to Congress that live-fire testing of such system or program would be unreasonably expensive and impractical.”

Subsec. (e)(8), (9). Pub. L. 107-314, §818(b), added pars. (8) and (9).

2001—Subsec. (c)(1), (2). Pub. L. 107-107 substituted “system development and demonstration” for “engineering and manufacturing development”.

1999—Subsec. (e)(7)(B). Pub. L. 106-65 substituted “Committee on Armed Services” for “Committee on National Security”.

1996—Subsec. (d). Pub. L. 104-106, §1502(a)(18)(A), substituted “the congressional defense committees” for “the Committees on Armed Services and on Appropriations of the Senate and House of Representatives”.

Subsec. (e)(7). Pub. L. 104-106, §1502(a)(18)(B), added par. (7).

1994—Subsec. (c)(1). Pub. L. 103-355, §3014(a)(2), (b), substituted “engineering and manufacturing development” for “full-scale engineering development” in first sentence and redesignated second sentence as par. (3).

Subsec. (c)(2). Pub. L. 103-355, §3014(a)(1), (3), added par. (2) and redesignated former par. (2) as (4).

Subsec. (c)(3). Pub. L. 103-355, §3014(a)(2), redesignated second sentence of par. (1) as par. (3) and substituted “certification under paragraph (1) or (2)” for “such certification”.

Subsec. (c)(4). Pub. L. 103-355, §3014(a)(1), redesignated par. (2) as (4).

1993—Subsec. (d). Pub. L. 103-160 substituted “to the Committees on Armed Services and on Appropriations of the Senate and House of Representatives” for “to the defense committees of Congress (as defined in section 2362(e)(3) of this title)”.

1990—Subsec. (a)(1)(A), (B). Pub. L. 101-510 made technical correction to directory language of Pub. L. 101-189, §804(a), see 1989 Amendment note below.

1989—Pub. L. 101-189, §802(c)(4)(A), substituted “testing and lethality testing required before full-scale production” for “and lethality testing; operational testing” in section catchline.

Subsec. (a)(1)(A). Pub. L. 101-189, §§ 802(c)(1)(A), 804(a), as amended by Pub. L. 101-510, substituted “this section and the report required by subsection (d) with respect to that testing is submitted in accordance with that subsection; and” for “this section;”.

Subsec. (a)(1)(B). Pub. L. 101-189, §§ 802(c)(1)(B), 804(a), as amended by Pub. L. 101-510, substituted “this section and the report required by subsection (d) with respect to that testing is submitted in accordance with that subsection.” for “this section; and”.

Subsec. (a)(1)(C). Pub. L. 101-189, § 802(c)(1)(C), struck out subpar. (C) which read as follows: “a major defense acquisition program may not proceed beyond low-rate initial production until initial operational test and evaluation of the program is completed in accordance with this section.”

Subsec. (b)(2), (3). Pub. L. 101-189, § 802(c)(2), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: “In the case of a major defense acquisition program, no person employed by the contractor for the system being tested may be involved in the conduct of the operational test and evaluation required under subsection (a). The limitation in the preceding sentence does not apply to the extent that the Secretary of Defense plans for persons employed by that contractor to be involved in the operation, maintenance, and support of the system being tested when the system is deployed in combat.”

Subsec. (d). Pub. L. 101-189, § 804(b), inserted at end “Each such report shall describe the results of the survivability or lethality testing and shall give the Secretary’s overall assessment of the testing.”

Subsec. (e)(3) to (8). Pub. L. 101-189, § 802(c)(3), redesignated pars. (4), (5), (6), and (8) as (3), (4), (5), and (6), respectively, and struck out former par. (3) which defined “major defense acquisition program” and former par. (7) which defined “operational test and evaluation”.

1988—Subsec. (a)(2). Pub. L. 100-456 made technical correction to directory language of Pub. L. 100-180, § 802(a)(1)(C). See 1987 Amendment note below.

1987—Subsec. (a). Pub. L. 100-180, § 802(a)(1), as amended by Pub. L. 100-456, designated existing provisions as par. (1), redesignated former pars. (1) to (3) as subpars. (A) to (C), and added par. (2).

Subsec. (b)(1). Pub. L. 100-180, § 802(a)(2), inserted “(including a covered product improvement program)” after “system or program” and “(or in the product modification or upgrade to the system, munition, or missile)” after “or missile”.

Subsec. (b)(2). Pub. L. 100-180, § 802(b), inserted at end “The limitation in the preceding sentence does not apply to the extent that the Secretary of Defense plans for persons employed by that contractor to be involved in the operation, maintenance, and support of the system being tested when the system is deployed in combat.”

Subsec. (c). Pub. L. 100-180, § 802(a)(3), (c), (d)(1), designated existing provisions as par. (1), substituted “missile program, or covered product improvement program” for “or missile program”, and inserted at end “The Secretary shall include with any such certification a report explaining how the Secretary plans to evaluate the survivability or the lethality of the system or program and assessing possible alternatives to realistic survivability testing of the system or program.”

Pub. L. 100-180, § 802(d)(2), designated existing provisions of former subsec. (d) as par. (2) of subsec. (c) and struck out heading of former subsec. (d) “Waiver in time of war or mobilization”.

Subsec. (d). Pub. L. 100-180, § 802(d)(3), added subsec. (d). Former subsec. (d) redesignated subsec. (c)(2).

Subsec. (e)(1)(B). Pub. L. 100-180, § 1231(11), substituted “section 2302(5)” for “section 2303(5)”.

Subsec. (e)(4). Pub. L. 100-180, § 802(a)(4)(A), (e), inserted “(or a covered product improvement program for a covered system)” after “covered system”, struck out “and survivability” after “for vulnerability”, and substituted “susceptibility to attack” for “operational requirements”.

Subsec. (e)(5). Pub. L. 100-180, § 802(a)(4)(B), inserted “(or a covered product improvement program for such a program)” after “missile program”.

Subsec. (e)(8). Pub. L. 100-180, § 802(a)(4)(C), added par. (8).

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-456, div. A, title XII, § 1233(l)(5), Sept. 29, 1988, 102 Stat. 2058, provided that: “The amendments made by this subsection [amending this section and sections 2435 and 8855 of this title and section 301c of Title 37, Pay and Allowances of the Uniformed Services] shall apply as if included in the enactment of Public Law 100-180.”

EFFECTIVE DATE

Pub. L. 99-500, § 101(c) [title X, § 910(b)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-145, Pub. L. 99-591, § 101(c) [title X, § 910(b)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-145, and Pub. L. 99-661, div. A, title IX, formerly title IV, § 910(b), Nov. 14, 1986, 100 Stat. 3924, renumbered title IX, Pub. L. 100-26, § 3(5), Apr. 21, 1987, 101 Stat. 273, provided that: “Section 2366 of title 10, United States Code (as added by subsection (a)), shall apply with respect to any decision to proceed with a program beyond low-rate initial production that is made—

“(1) after May 31, 1987, in the case of a decision referred to in subsection (a)(1) or (a)(2) of such section; or

“(2) after the date of the enactment of this Act [Oct. 18, 1986], in the case of a decision referred to in subsection (a)(3) of such section.”

§ 2366a. Major defense acquisition programs: determination required before Milestone A approval

(a) RESPONSIBILITIES.—Before granting Milestone A approval for a major defense acquisition program or a major subprogram, the milestone decision authority for the program or subprogram shall ensure that—

(1) information about the program or subprogram is sufficient to warrant entry of the program or subprogram into the risk reduction phase;

(2) the Secretary of the military department concerned and the Chief of the armed force concerned concur in the cost, schedule, technical feasibility, and performance trade-offs that have been made with regard to the program; and

(3) there are sound plans for progression of the program or subprogram to the development phase.

(b) WRITTEN DETERMINATION REQUIRED.—A major defense acquisition program or subprogram may not receive Milestone A approval or otherwise be initiated prior to Milestone B approval until the milestone decision authority determines in writing, after consultation with the Joint Requirements Oversight Council on matters related to program requirements and military needs—

(1) that the program fulfills an approved initial capabilities document;

(2) that the program has been developed in light of appropriate market research;

(3) if the program duplicates a capability already provided by an existing system, the duplication provided by such program is necessary and appropriate;

(4) that, with respect to any identified areas of risk, there is a plan to reduce the risk;

(5) that planning for sustainment has been addressed and that a determination of applicability of core logistics capabilities requirements has been made;

(6) that an analysis of alternatives has been performed consistent with study guidance developed by the Director of Cost Assessment and Program Evaluation;

(7) that a cost estimate for the program has been submitted, with the concurrence of the Director of Cost Assessment and Program Evaluation, and that the level of resources required to develop, procure, and sustain the program is sufficient for successful program execution; and

(8) that the program or subprogram meets any other considerations the milestone decision authority considers relevant.

(c) **SUBMISSION TO CONGRESS.**—At the request of any of the congressional defense committees, the Secretary of Defense shall submit to the committee an explanation of the basis for a determination made under subsection (b) with respect to a major defense acquisition program, together with a copy of the written determination. The explanation shall be submitted in unclassified form, but may include a classified annex.

(d) **DEFINITIONS.**—In this section:

(1) The term “major defense acquisition program” has the meaning provided in section 2430 of this title.

(2) The term “initial capabilities document” means any capabilities requirement document approved by the Joint Requirements Oversight Council that establishes the need for a materiel approach to resolve a capability gap.

(3) The term “Milestone A approval” means a decision to enter into technology maturation and risk reduction pursuant to guidance prescribed by the Secretary of Defense for the management of Department of Defense acquisition programs.

(4) The term “Milestone B approval” has the meaning provided that term in section 2366(e)(7) of this title.

(5) The term “core logistics capabilities” means the core logistics capabilities identified under section 2464(a) of this title.

(6) the term “major subprogram” means a major subprogram of a major defense acquisition program designated under section 2430a(a)(1) of this title.

(7) The term “milestone decision authority”, with respect to a major defense acquisition program or a major subprogram, means the official within the Department of Defense designated with the overall responsibility and authority for acquisition decisions for the program or subprogram, including authority to approve entry of the program or subprogram into the next phase of the acquisition process.

(Added Pub. L. 110–181, div. A, title IX, § 943(a)(1), Jan. 28, 2008, 122 Stat. 288, § 2366b; renumbered § 2366a and amended Pub. L. 110–417, [div. A], title VIII, § 813(b), (e)(1), Oct. 14, 2008, 122 Stat. 4527; Pub. L. 111–23, title I, § 101(d)(3), title II, §§ 201(e), 204(a), (b), May 22, 2009, 123 Stat. 1710, 1720, 1723; Pub. L. 111–383, div. A, title VIII, § 814(b), title X, § 1075(b)(33), Jan. 7, 2011, 124 Stat.

4266, 4370; Pub. L. 112–81, div. A, title VIII, § 801(a), (e)(1), Dec. 31, 2011, 125 Stat. 1482, 1483; Pub. L. 112–239, div. A, title III, § 322(e)(1), title X, § 1076(a)(10), Jan. 2, 2013, 126 Stat. 1695, 1948; Pub. L. 114–92, div. A, title VIII, § 823(a), Nov. 25, 2015, 129 Stat. 902.)

PRIOR PROVISIONS

A prior section 2366a was renumbered section 2366b of this title.

AMENDMENTS

2015—Pub. L. 114–92 amended section generally. Prior to amendment, section related to certification required before Milestone A approval of major defense acquisition programs.

2013—Pub. L. 112–239, § 1076(a)(10)(C), made technical amendment to directory language of Pub. L. 112–81, § 801(e)(1)(A). See 2011 Amendment note below.

Subsec. (a)(4). Pub. L. 112–239, § 322(e)(1), substituted “core logistics capabilities” for “core depot-level maintenance and repair capabilities”.

Subsec. (a)(5), (6). Pub. L. 112–239, § 1076(a)(10)(A), made technical amendment to directory language of Pub. L. 112–81, § 801(a)(1)(B). See 2011 Amendment notes below.

Subsec. (c)(7). Pub. L. 112–239, § 1076(a)(10)(B), made technical amendment to directory language of Pub. L. 112–81, § 801(a)(2). See 2011 Amendment note below.

Pub. L. 112–239, § 322(e)(1), substituted “core logistics capabilities” for “core depot-level maintenance and repair capabilities” in two places.

2011—Pub. L. 112–81, § 801(e)(1)(A), as amended by Pub. L. 112–239, § 1076(a)(10)(C), struck out “or Key Decision Point A” after “Milestone A” in section catchline.

Subsec. (a). Pub. L. 112–81, § 801(e)(1)(B), struck out “, or Key Decision Point A approval in the case of a space program,” after “Milestone A approval” and “, or Key Decision Point B approval in the case of a space program,” after “Milestone B approval” in introductory provisions.

Subsec. (a)(2). Pub. L. 112–81, § 801(a)(1)(A), substituted “function” for “core competency”.

Subsec. (a)(4). Pub. L. 112–81, § 801(a)(1)(C), added par. (4). Former par. (4) redesignated (5).

Subsec. (a)(5). Pub. L. 112–81, § 801(a)(1)(B), as amended by Pub. L. 112–239, § 1076(a)(10)(A), redesignated par. (4) as (5). Former par. (5) redesignated (6).

Subsec. (a)(6). Pub. L. 112–81, § 801(a)(1)(D), substituted “develop, procure, and sustain” for “develop and procure”.

Pub. L. 112–81, § 801(a)(1)(B), as amended by Pub. L. 112–239, § 1076(a)(10)(A), redesignated par. (5) as (6).

Subsec. (b)(1). Pub. L. 112–81, § 801(e)(1)(C)(i), struck out “(or Key Decision Point A approval in the case of a space program)” after “Milestone A approval”.

Pub. L. 111–383, § 814(b)(1)(A), substituted “a major defense acquisition program certified by the Milestone Decision Authority under subsection (a) or a designated major subprogram of such program, if the projected cost of the program or subprogram” for “a major defense acquisition program certified by the Milestone Decision Authority under subsection (a), if the projected cost of the program”.

Subsec. (b)(2). Pub. L. 111–383, § 814(b)(1)(B), inserted “or designated major subprogram” after “major defense acquisition program”.

Subsec. (b)(2)(C)(ii). Pub. L. 112–81, § 801(e)(1)(C)(ii), struck out “, or Key Decision Point A approval in the case of a space program,” after “Milestone A approval”.

Subsec. (c). Pub. L. 111–383, § 1075(b)(33)(A), inserted a space after “(c)”.

Subsec. (c)(2) to (5). Pub. L. 111–383, § 814(b)(2), added par. (2) and redesignated former pars. (2) to (4) as (3) to (5), respectively. Former par. (5) redesignated (6).

Pub. L. 111–383, § 1075(b)(33)(B), which directed substitution of “section 118b(c)(3) of this title” for “section 125a(a) of this title” in par. (4), was executed by making

the substitution in par. (5) to reflect the probable intent of Congress and the amendment by Pub. L. 111-383, § 814(b)(2)(A). See above.

Subsec. (c)(6). Pub. L. 111-383, § 814(b)(2)(A), redesignated par. (5) as (6).

Subsec. (c)(7). Pub. L. 112-81, § 801(a)(2), as amended by Pub. L. 112-239, § 1076(a)(10)(B), added par. (7).

2009—Subsec. (a). Pub. L. 111-23, § 204(a), substituted “may not receive Milestone A approval, or Key Decision Point A approval in the case of a space program, or otherwise be initiated prior to Milestone B approval, or Key Decision Point B approval in the case of a space program,” for “may not receive Milestone A approval, or Key Decision Point A approval in the case of a space program,” in introductory provisions.

Subsec. (a)(3). Pub. L. 111-23, § 201(e)(1), struck out “and” at end.

Subsec. (a)(4). Pub. L. 111-23, § 201(e)(3), added par. (4). Former par. (4) redesignated (5).

Pub. L. 111-23, § 101(d)(3), inserted “, with the concurrence of the Director of Cost Assessment and Program Evaluation,” after “has been submitted”.

Subsec. (a)(5). Pub. L. 111-23, § 201(e)(2), redesignated par. (4) as (5).

Subsec. (b). Pub. L. 111-23, § 204(b), designated existing provisions as par. (1), substituted “by at least 25 percent, or the program manager determines that the period of time required for the delivery of an initial operational capability is likely to exceed the schedule objective established pursuant to section 181(b)(5) of this title by more than 25 percent,” for “by at least 25 percent,” and added par. (2).

2008—Pub. L. 110-417, § 813(b), renumbered section 2366b of this title as this section.

Subsec. (a)(1), (2). Pub. L. 110-417, § 813(e)(1)(A), substituted “program” for “system”.

Subsec. (a)(3). Pub. L. 110-417, § 813(e)(1)(B), substituted “if the program” for “if the system” and “such program” for “such system”.

Subsec. (a)(4). Pub. L. 110-417, § 813(e)(1)(A), substituted “program” for “system” in two places.

Subsec. (b). Pub. L. 110-417, § 813(e)(1)(C), substituted “major defense acquisition program” for “major system”, “cost of the program” for “cost of the system”, “estimate for the program” for “estimate for the system”, “the program concerned” for “the system concerned”, and “procure the program” for “procure the system”.

Subsec. (c)(1). Pub. L. 110-417, § 813(e)(1)(D), substituted “major defense acquisition program” for “major system” and “2430” for “2302(5)”.

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112-239, div. A, title III, § 322(f), Jan. 2, 2013, 126 Stat. 1695, provided that: “This section [enacting sections 2460 and 2464 of this title, amending this section and sections 2366b, 2460, and 2464 of this title, repealing sections 2460 and 2464 of this title, and amending provisions set out as a note under this section] and the amendments made by this section shall take effect on December 31, 2011, the date of the enactment of the National Defense Authorization Act for Fiscal Year 2012 [Pub. L. 112-81], immediately after the enactment of that Act.”

Pub. L. 112-239, div. A, title X, § 1076(a), Jan. 2, 2013, 126 Stat. 1947, provided that the amendment made by section 1076(a)(10) is effective Dec. 31, 2011, and as if included in Pub. L. 112-81 as enacted.

EFFECTIVE DATE

Pub. L. 110-181, div. A, title IX, § 943(c), Jan. 28, 2008, 122 Stat. 289, as amended by Pub. L. 110-417, [div. A], title VIII, § 813(e)(2)(B), Oct. 14, 2008, 122 Stat. 4528, provided that: “Section 2366b [now 2366a] of title 10, United States Code, as added by subsection (a), shall apply to major defense acquisition programs on and after March 1, 2008. In the case of the certification required by [former] paragraph (2) of subsection (a) of such section, during the period prior to the completion of the first

quadrennial roles and missions review required by [former] section 118b of title 10, United States Code, the certification required by that paragraph shall be that the system is being executed by an entity with a relevant core competency as identified by the Secretary of Defense.”

MILESTONE A DECISIONS

Pub. L. 114-92, div. A, title VIII, § 802(d)(2), Nov. 25, 2015, 129 Stat. 880, provided that: “The Chief of the Armed Force concerned shall advise the milestone decision authority for a major defense acquisition program of the Chief’s views on cost, schedule, technical feasibility, and performance trade-offs that have been made with regard to the program, as provided in section 2366a(a)(2) of title 10, United States Code, as amended by section 823 of this Act, prior to a Milestone A decision on the program.”

REQUIREMENTS PRIOR TO LOW-RATE INITIAL PRODUCTION

Pub. L. 112-81, div. A, title VIII, § 801(c), Dec. 31, 2011, 125 Stat. 1483, as amended by Pub. L. 112-239, div. A, title III, § 322(e)(3), Jan. 2, 2013, 126 Stat. 1695, provided that: “Prior to entering into a contract for low-rate initial production of a major defense acquisition program, the Secretary of Defense shall ensure that the detailed requirements for core logistics capabilities and the associated sustaining workloads required to support such requirements, have been defined.”

GUIDANCE

Pub. L. 112-81, div. A, title VIII, § 801(d), Dec. 31, 2011, 125 Stat. 1483, provided that: “Not later than 120 days after the date of the enactment of this Act [Dec. 31, 2011], the Secretary of Defense shall issue guidance implementing the amendments made by subsections (a) and (b) [amending this section and section 2366b of this title], and subsection (c) [set out above], in a manner that is consistent across the Department of Defense.”

APPLICATION TO ONGOING PROGRAMS

Pub. L. 111-23, title II, § 204(c), May 22, 2009, 123 Stat. 1723, as amended by Pub. L. 111-383, div. A, title VIII, § 813(c), Jan. 7, 2011, 124 Stat. 4265, which related to application of the requirements of this section to certain major defense acquisition programs initiated before May 22, 2009, was repealed by Pub. L. 112-81, div. A, title VIII, § 819(a), Dec. 31, 2011, 125 Stat. 1501.

REVIEW OF DEPARTMENT OF DEFENSE ACQUISITION DIRECTIVES

Pub. L. 110-181, div. A, title IX, § 943(b), Jan. 28, 2008, 122 Stat. 289, as amended by Pub. L. 110-417, [div. A], title VIII, § 813(e)(2)(A), Oct. 14, 2008, 122 Stat. 4528, provided that: “Not later than 180 days after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Defense shall review Department of Defense Directive 5000.1 and associated guidance, and the manner in which such directive and guidance have been implemented, and take appropriate steps to ensure that the Department does not commence a technology development program for a major defense acquisition program without Milestone A approval (or Key Decision Point A approval in the case of a space program).”

§ 2366b. Major defense acquisition programs: certification required before Milestone B approval

(a) CERTIFICATIONS AND DETERMINATION REQUIRED.—A major defense acquisition program may not receive Milestone B approval until the milestone decision authority—

(1) has received a preliminary design review and conducted a formal post-preliminary design review assessment, and certifies on the basis of such assessment that the program

demonstrates a high likelihood of accomplishing its intended mission;

(2) further certifies that the technology in the program has been demonstrated in a relevant environment, as determined by the milestone decision authority on the basis of an independent review and assessment by the Assistant Secretary of Defense for Research and Engineering, in consultation with the Deputy Assistant Secretary of Defense for Developmental Test and Evaluation;

(3) determines in writing that—

(A) the program is affordable when considering the ability of the Department of Defense to accomplish the program's mission using alternative systems;

(B) appropriate trade-offs among cost, schedule, technical feasibility, and performance objectives have been made to ensure that the program is affordable when considering the per unit cost and the total acquisition cost in the context of the total resources available during the period covered by the future-years defense program submitted during the fiscal year in which the certification is made;

(C) reasonable cost and schedule estimates have been developed to execute, with the concurrence of the Director of Cost Assessment and Program Evaluation, the product development and production plan under the program; and¹

(D) funding is available to execute the product development and production plan under the program, through the period covered by the future-years defense program submitted during the fiscal year in which the certification is made, consistent with the estimates described in subparagraph (C) for the program;

(E) appropriate market research has been conducted prior to technology development to reduce duplication of existing technology and products;

(F) the Department of Defense has completed an analysis of alternatives with respect to the program;

(G) the Joint Requirements Oversight Council has accomplished its duties with respect to the program pursuant to section 181(b) of this title, including an analysis of the operational requirements for the program;

(H) life-cycle sustainment planning, including corrosion prevention and mitigation planning, has identified and evaluated relevant sustainment costs throughout development, production, operation, sustainment, and disposal of the program, and any alternatives, and that such costs are reasonable and have been accurately estimated;

(I) an estimate has been made of the requirements for core logistics capabilities and the associated sustaining workloads required to support such requirements;

(J) there is a plan to mitigate and account for any costs in connection with any anticipated de-certification of cryptographic systems and components during the production

and procurement of the major defense acquisition program to be acquired;

(K) the program complies with all relevant policies, regulations, and directives of the Department of Defense; and

(L) the Secretary of the military department concerned and the Chief of the armed force concerned concur in the trade-offs made in accordance with subparagraph (B); and

(4) in the case of a space system, performs a cost benefit analysis for any new or follow-on satellite system using a dedicated ground control system instead of a shared ground control system, except that no cost benefit analysis is required to be performed under this paragraph for any Milestone B approval of a space system after December 31, 2019.

(b) CHANGES TO CERTIFICATIONS OR DETERMINATION.—(1) The program manager for a major defense acquisition program that has received certifications or a determination under subsection (a) shall immediately notify the milestone decision authority of any changes to the program or a designated major subprogram of such program that—

(A) alter the substantive basis for the certifications or determination of the milestone decision authority relating to any component of such certifications or determination specified in paragraph (1), (2), or (3) of subsection (a); or

(B) otherwise cause the program or subprogram to deviate significantly from the material provided to the milestone decision authority in support of such certifications or determination.

(2) Upon receipt of information under paragraph (1), the milestone decision authority may withdraw the certifications or determination concerned or rescind Milestone B approval if the milestone decision authority determines that such certifications, determination, or approval are no longer valid.

(c) SUBMISSION TO CONGRESS.—(1) The certifications and determination under subsection (a) with respect to a major defense acquisition program shall be submitted to the congressional defense committees with the first Selected Acquisition Report submitted under section 2432 of this title after completion of the certification.

(2) The milestone decision authority shall retain records of the basis for the certifications and determination under paragraphs (1), (2), and (3) of subsection (a).

(3) At the request of any of the congressional defense committees, the Secretary of Defense shall submit to the committee an explanation of the basis for the certifications and determination under paragraphs (1), (2), and (3) of subsection (a) with respect to a major defense acquisition program. The explanation shall be submitted in unclassified form, but may include a classified annex.

(d) WAIVER FOR NATIONAL SECURITY.—(1) The milestone decision authority may, at the time of Milestone B approval or at the time that such milestone decision authority withdraws a certification or rescinds Milestone B approval pursuant to subsection (b)(2), waive the applicabil-

¹ So in original. The word "and" probably should not appear.

ity to a major defense acquisition program of one or more components (as specified in paragraph (1), (2), or (3) of subsection (a)) of the certification and determination requirements if the milestone decision authority determines that, but for such a waiver, the Department would be unable to meet critical national security objectives.

(2) Whenever the milestone decision authority makes such a determination and authorizes such a waiver—

(A) the waiver, the waiver determination, and the reasons for the waiver determination shall be submitted in writing to the congressional defense committees within 30 days after the waiver is authorized; and

(B) the milestone decision authority shall review the program not less often than annually to determine the extent to which such program currently satisfies the certification and determination components specified in paragraphs (1), (2), and (3) of subsection (a) until such time as the milestone decision authority determines that the program satisfies all such certification and determination components.

(3) The requirement in paragraph (2)(B) shall not apply to a program for which a certification was required pursuant to section 2433a(c) of this title if the milestone decision authority—

(A) determines in writing that—

(i) the program has reached a stage in the acquisition process at which it would not be practicable to meet the certification component that was waived; and

(ii) the milestone decision authority has taken appropriate alternative actions to address the underlying purposes of such certification component; and

(B) submits the written determination, and an explanation of the basis for the determination, to the congressional defense committees.

(e) **DESIGNATION OF CERTIFICATION STATUS IN BUDGET DOCUMENTATION.**—Any budget request, budget justification material, budget display, reprogramming request, Selected Acquisition Report, or other budget documentation or performance report submitted by the Secretary of Defense to the President regarding a major defense acquisition program receiving a waiver pursuant to subsection (d) shall prominently and clearly indicate that such program has not fully satisfied the certification requirements of this section until such time as the milestone decision authority makes the determination that such program has satisfied all such certification requirements.

(f) **NONDELEGATION.**—The milestone decision authority may not delegate the certification requirement under subsection (a) or the authority to waive any component of such requirement under subsection (d).

(g) **DEFINITIONS.**—In this section:

(1) The term “major defense acquisition program” means a Department of Defense acquisition program that is a major defense acquisition program for purposes of section 2430 of this title.

(2) The term “designated major subprogram” means a major subprogram of a major

defense acquisition program designated under section 2430a(a)(1) of this title.

(3) The term “milestone decision authority”, with respect to a major defense acquisition program, means the official within the Department of Defense designated with the overall responsibility and authority for acquisition decisions for the program, including authority to approve entry of the program into the next phase of the acquisition process.

(4) The term “Milestone B approval” has the meaning provided that term in section 2366(e)(7) of this title.

(5) The term “core logistics capabilities” means the core logistics capabilities identified under section 2464(a) of this title.

(Added Pub. L. 109–163, div. A, title VIII, § 801(a), Jan. 6, 2006, 119 Stat. 3366, § 2366a; amended Pub. L. 109–364, div. A, title VIII, § 805, Oct. 17, 2006, 120 Stat. 2314; Pub. L. 110–181, div. A, title VIII, § 812, Jan. 28, 2008, 122 Stat. 219; renumbered § 2366b, Pub. L. 110–417, [div. A], title VIII, § 813(a), (b), Oct. 14, 2008, 122 Stat. 4527; Pub. L. 111–23, title I, § 101(d)(4), title II, §§ 201(f), 205(a), May 22, 2009, 123 Stat. 1710, 1720, 1724; Pub. L. 111–383, div. A, title VIII, §§ 813(d)(1), 814(c), title IX, § 901(j)(4), title X, § 1075(k)(1), Jan. 7, 2011, 124 Stat. 4265, 4266, 4324, 4378; Pub. L. 112–81, div. A, title VIII, §§ 801(b), (e)(2), 819(b), Dec. 31, 2011, 125 Stat. 1483, 1484, 1501; Pub. L. 112–239, div. A, title III, § 322(e)(2), title IX, § 904(e)(2), Jan. 2, 2013, 126 Stat. 1695, 1867; Pub. L. 113–66, div. A, title VIII, §§ 821(a), 822(a), title X, § 1091(b)(1), Dec. 26, 2013, 127 Stat. 809, 876; Pub. L. 114–92, div. A, title VIII, § 824(a), Nov. 25, 2015, 129 Stat. 903.)

PRIOR PROVISIONS

A prior section 2366b was renumbered section 2366a of this title.

AMENDMENTS

2015—Pub. L. 114–92 amended section generally. Prior to amendment, section related to certification required before Milestone B approval of major defense acquisition programs.

2013—Subsec. (a)(3)(D). Pub. L. 112–239, § 904(e)(2), substituted “the Assistant Secretary of Defense for Research and Engineering, in consultation with the Deputy Assistant Secretary of Defense for Developmental Test and Evaluation” for “the Assistant Secretary of Defense for Research and Engineering”.

Subsec. (a)(3)(F). Pub. L. 112–239, § 322(e)(2), as amended by Pub. L. 113–66, § 1091(b)(1), substituted “core logistics capabilities” for “core depot-level maintenance and repair capabilities, as well as the associated logistics capabilities”.

Subsec. (a)(3)(G), (H). Pub. L. 113–66, § 821(a), added subpar. (G) and redesignated former subpar. (G) as (H).

Subsec. (a)(4). Pub. L. 113–66, § 822(a), added par. (4).

2011—Pub. L. 112–81, § 801(e)(2)(A), struck out “or Key Decision Point B” after “Milestone B” in section catchline.

Subsec. (a). Pub. L. 112–81, § 801(e)(2)(B), struck out “, or Key Decision Point B approval in the case of a space program,” after “Milestone B approval” in introductory provisions.

Subsec. (a)(3)(D). Pub. L. 111–383, § 901(j)(4), substituted “Assistant Secretary of Defense for Research and Engineering” for “Director of Defense Research and Engineering”.

Subsec. (a)(3)(E) to (G). Pub. L. 112–81, § 801(b)(1), added subpars. (E) and (F) and redesignated former subpar. (E) as (G).

Subsec. (b)(1). Pub. L. 111–383, § 814(c)(1)(A), substituted “any changes to the program or a designated

major subprogram of such program” for “any changes to the program” in introductory provisions.

Subsec. (b)(1)(B). Pub. L. 111–383, §814(c)(1)(B), substituted “otherwise cause the program or subprogram” for “otherwise cause the program”.

Subsec. (b)(2). Pub. L. 112–81, §801(e)(2)(C), struck out “(or Key Decision Point B approval in the case of a space program)” after “Milestone B approval”.

Subsec. (d)(1). Pub. L. 112–81, §801(e)(2)(C), struck out “(or Key Decision Point B approval in the case of a space program)” after “Milestone B approval” in two places.

Pub. L. 111–383, §813(d)(1)(A), substituted “(as specified in paragraph (1), (2), or (3) of subsection (a))” for “(as specified in paragraph (1) or (2) of subsection (a))”.

Subsec. (d)(2)(B). Pub. L. 111–383, §1075(k)(1), which directed amendment of directory language of Pub. L. 111–23, §205(a)(1)(B), resulting in substitution of “paragraphs (1), (2), and (3)” for “paragraphs (1) and (2)” in text, was not executed because of the prior identical amendment by Pub. L. 111–383, §813(d)(1)(B). See below.

Pub. L. 111–383, §813(d)(1)(B), substituted “specified in paragraphs (1), (2), and (3) of subsection (a)” for “specified in paragraphs (1) and (2) of subsection (a)”.

Subsec. (d)(3). Pub. L. 112–81, §819(b), added par. (3).

Subsec. (g)(2) to (4). Pub. L. 111–383, §814(c)(2), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively. Former par. (4) redesignated (5).

Subsec. (g)(5). Pub. L. 112–81, §801(b)(2), added par. (5) and struck out former par. (5) which read as follows: “The term ‘Key Decision Point B’ means the official program initiation of a National Security Space program of the Department of Defense, which triggers a formal review to determine maturity of technology and the program’s readiness to begin the preliminary system design.”

Pub. L. 111–383, §814(c)(2)(A), redesignated par. (4) as (5).

2009—Subsec. (a)(1)(B). Pub. L. 111–23, §201(f), inserted “appropriate trade-offs among cost, schedule, and performance objectives have been made to ensure that” before “the program is affordable”.

Subsec. (a)(1)(C). Pub. L. 111–23, §101(d)(4), inserted “, with the concurrence of the Director of Cost Assessment and Program Evaluation,” before “the product”.

Subsec. (a)(1)(D). Pub. L. 111–23, §205(a)(3)(A), struck out “and” at end.

Subsec. (a)(2), (3). Pub. L. 111–23, §205(a)(3)(B), (C), added par. (2) and redesignated former par. (2) as (3).

Subsec. (a)(3)(D). Pub. L. 111–23, §205(a)(3)(D)(i), substituted “, as determined by the Milestone Decision Authority on the basis of an independent review and assessment by the Director of Defense Research and Engineering; and” for semicolon.

Subsec. (a)(3)(E), (F). Pub. L. 111–23, §205(a)(3)(D)(ii), (iii), redesignated subpar. (F) as (E) and struck out former subpar. (E) which read as follows: “the program demonstrates a high likelihood of accomplishing its intended mission; and”.

Subsec. (d). Pub. L. 111–23, §205(a)(1), designated existing provisions as par. (1) and substituted par. (2) for “Whenever the milestone decision authority makes such a determination and authorizes such a waiver, the waiver, the determination, and the reasons for the determination shall be submitted in writing to the congressional defense committees within 30 days after the waiver is authorized.”

Subsecs. (e) to (g). Pub. L. 111–23, §205(a)(2), added subsec. (e) and redesignated former subsecs. (e) and (f) as (f) and (g), respectively.

2008—Pub. L. 110–417, §813(a), (b), renumbered section 2366a of this title as this section.

Subsec. (a). Pub. L. 110–181, §812(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) consisted of pars. (1) to (10) relating to required certifications by milestone decision authority for major defense acquisition program to receive Milestone B approval, or Key Decision Point B approval in the case of a space program.

Subsec. (b). Pub. L. 110–181, §812(3), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 110–181, §812(4), designated existing provisions as par. (1) and added par. (2).

Pub. L. 110–181, §812(2), redesignated subsec. (b) as (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 110–181, §812(5), substituted “authority may, at the time of Milestone B approval (or Key Decision Point B approval in the case of a space program) or at the time that such milestone decision authority withdraws a certification or rescinds Milestone B approval (or Key Decision Point B approval in the case of a space program) pursuant to subsection (b)(2), waive” for “authority may waive” and “paragraph (1) or (2)” for “paragraph (1), (2), (3), (4), (5), (6), (7), (8), or (9)”.

Pub. L. 110–181, §812(2), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 110–181, §812(6), substituted “subsection (d)” for “subsection (c)”.

Pub. L. 110–181, §812(2), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 110–181, §812(2), redesignated subsec. (e) as (f).

2006—Subsec. (a)(1) to (7). Pub. L. 109–364, §805(a)(1)–(3), added par. (1) and redesignated former pars. (1) to (6) as (2) to (7), respectively. Former par. (7) redesignated (10).

Subsec. (a)(8), (9). Pub. L. 109–364, §805(a)(4), (5), added pars. (8) and (9).

Subsec. (a)(10). Pub. L. 109–364, §805(a)(1), redesignated par. (7) as (10).

Subsec. (c). Pub. L. 109–364, §805(b), substituted “(5), (6), (7), (8), or (9)” for “(5, or (6))”.

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 113–66, div. A, title VIII, §821(b), Dec. 26, 2013, 127 Stat. 809, provided that: “The amendments made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Dec. 26, 2013], and shall apply with respect to major defense acquisition programs which are subject to Milestone B approval on or after the date occurring six months after the date of the enactment of this Act.”

Pub. L. 113–66, div. A, title X, §1091(b), Dec. 26, 2013, 127 Stat. 876, provided in part that the amendment made by section 1091(b)(1) is effective as of Jan. 2, 2013, and as if included in Pub. L. 112–239 as enacted.

Amendment by section 322(e)(2) of Pub. L. 112–239 effective Dec. 31, 2011, immediately after enactment of Pub. L. 112–81, see section 322(f) of Pub. L. 112–239, set out as an note under section 2366a of this title.

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 111–383, div. A, title VIII, §813(d)(1), Jan. 7, 2011, 124 Stat. 4265, provided that the amendment made by section 813(d)(1) is effective as of May 22, 2009.

Amendment by section 901(j)(4) of Pub. L. 111–383 effective Jan. 1, 2011, see section 901(p) of Pub. L. 111–383, set out as a note under section 131 of this title.

Pub. L. 111–383, div. A, title X, §1075(k), Jan. 7, 2011, 124 Stat. 4378, provided that the amendment made by section 1075(k)(1) is effective as of May 22, 2009, and as if included in Pub. L. 111–23 as enacted.

MILESTONE B DECISIONS

Pub. L. 114–92, div. A, title VIII, §802(d)(3), Nov. 25, 2015, 129 Stat. 880, provided that: “The Chief of the Armed Force concerned shall advise the milestone decision authority for a major defense acquisition program of the Chief’s views on cost, schedule, technical feasibility, and performance trade-offs that have been made with regard to the program, as provided in section 2366b(b)(3) of title 10, United States Code, as amended by section 824 of this Act, prior to a Milestone B decision on the program.”

CERTIFICATION AND REVIEW OF PROGRAMS ENTERING DEVELOPMENT PRIOR TO ENACTMENT OF SECTION 2366B OF TITLE 10

Pub. L. 111–23, title II, §205(b), May 22, 2009, 123 Stat. 1725, as amended by Pub. L. 111–383, div. A, title VIII,

§ 813(d)(2), Jan. 7, 2011, 124 Stat. 4266, which related to certification and review of programs entering development prior to enactment of section 2366b of this title, was repealed by Pub. L. 112-239, div. A, title VIII, § 814, Jan. 2, 2013, 126 Stat. 1830.

FORMAL REVIEW PROCESS FOR BANDWIDTH REQUIREMENTS

Pub. L. 110-417, [div. A], title X, § 1047(d), Oct. 14, 2008, 122 Stat. 4603, as amended by Pub. L. 111-84, div. A, title X, § 1033, Oct. 28, 2009, 123 Stat. 2449, provided that:

“(1) IN GENERAL.—The Secretary of Defense and the Director of National Intelligence shall, as part of the Milestone B or Key Decision Point B approval process for any major defense acquisition program or major system acquisition program, establish a formal review process to ensure that—

“(A) the bandwidth requirements needed to support such program are or will be met; and

“(B) a determination will be made with respect to how to meet the bandwidth requirements for such program.

“(2) REPORTS.—Not later than January 1 of each year, the Secretary of Defense and the Director of National Intelligence shall each submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives], the Select Committee on Intelligence of the Senate, and the Permanent Select Committee on Intelligence of the House of Representatives a report on any determinations made under paragraph (1) with respect to meeting the bandwidth requirements for major defense acquisition programs and major system acquisition programs during the preceding fiscal year.”

§ 2367. Use of federally funded research and development centers

(a) LIMITATION ON USE OF CENTERS.—Except as provided in subsection (b), the Secretary of Defense may not place work with a federally funded research and development center unless such work is within the purpose, mission, and general scope of effort of such center as established in the sponsoring agreement of the Department of Defense with such center.

(b) EXCEPTION FOR APPLIED SCIENTIFIC RESEARCH.—This section does not apply to a federally funded research and development center that performs applied scientific research under laboratory conditions.

(c) LIMITATION ON CREATION OF NEW CENTERS.—(1) The head of an agency may not obligate or expend amounts appropriated to the Department of Defense for purposes of operating a federally funded research center that was not in existence before June 2, 1986, until—

(A) the head of the agency submits to Congress a report with respect to such center that describes the purpose, mission, and general scope of effort of the center; and

(B) a period of 60 days beginning on the date such report is received by Congress has elapsed.

(2) In this subsection, the term “head of an agency” has the meaning given such term in section 2302(1) of this title.

(d) IDENTIFICATION TO CONGRESS OF FFRDC WORKLOAD EFFORT.—After the close of a fiscal year, and not later than January 1 of the next year, the Secretary shall submit to the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives a

report setting forth the actual obligations and the actual man-years of effort expended at each federally funded research and development center during that fiscal year.

(Added Pub. L. 99-500, § 101(c) [title X, § 912(a)(1)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-146, and Pub. L. 99-591, § 101(c) [title X, § 912(a)(1)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-146; Pub. L. 99-661, div. A, title IX, formerly title IV, § 912(a)(1), Nov. 14, 1986, 100 Stat. 3925, renumbered title IX, Pub. L. 100-26, § 3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 102-190, div. A, title II, § 256(a)(1), Dec. 5, 1991, 105 Stat. 1330; Pub. L. 104-106, div. A, title XV, § 1502(a)(9), Feb. 10, 1996, 110 Stat. 503; Pub. L. 106-65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 107-314, div. A, title X, § 1041(a)(12), Dec. 2, 2002, 116 Stat. 2645.)

CODIFICATION

Pub. L. 99-591 is a corrected version of Pub. L. 99-500.

Pub. L. 99-500, Pub. L. 99-591, and Pub. L. 99-661 added identical sections.

AMENDMENTS

2002—Subsec. (d). Pub. L. 107-314, § 1041(a)(12), struck out designations for pars. (1) and (2) and text of par. (1). Prior to amendment par. (1) read as follows: “In the documents provided to Congress by the Secretary of Defense in support of the budget submitted by the President under section 1105 of title 31 for any fiscal year, the Secretary shall set forth the proposed amount of the man-years of effort to be funded by the Department of Defense for each federally funded research and development center for the fiscal year covered by that budget.”

1999—Subsec. (d)(2). Pub. L. 106-65 substituted “and the Committee on Armed Services” for “and the Committee on National Security”.

1996—Subsec. (d)(2). Pub. L. 104-106 substituted “the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on National Security and the Committee on Appropriations of the” for “the Committees on Armed Services and the Committees on Appropriations of the Senate and”.

1991—Subsec. (d). Pub. L. 102-190 added subsec. (d).

EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102-190, div. A, title II, § 256(a)(2), Dec. 5, 1991, 105 Stat. 1330, provided that:

“(A) Paragraph (1) of subsection (d) of section 2367 of title 10, United States Code, as added by paragraph (1), shall take effect with respect to the budget submitted for fiscal year 1994.

“(B) Paragraph (2) of such subsection shall take effect with respect to fiscal year 1992.”

GAO STUDY; REPORT

Pub. L. 99-500, § 101(c) [title X, § 912(b), (c)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-146, Pub. L. 99-591, § 101(c) [title X, § 912(b), (c)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-146, and Pub. L. 99-661, div. A, title IX, formerly title IV, § 912(b), (c), Nov. 14, 1986, 100 Stat. 3926, renumbered title IX, Pub. L. 100-26, § 3(5), Apr. 21, 1987, 101 Stat. 273, directed Comptroller General to conduct a study of national defense role of federally funded research and development centers and submit a report to Congress not later than one year after Oct. 18, 1986.

§ 2368. Centers for Science, Technology, and Engineering Partnership

(a) DESIGNATION.—(1) The Secretary of Defense, in coordination with the Secretaries of the military departments, shall designate each science and technology reinvention laboratory

as a Center for Science, Technology, and Engineering Partnership (in this section referred to as “Centers”) in the recognized core competencies of the designee.

(2) The Secretary of Defense shall establish a policy to encourage the Secretary of each military department to reengineer management and business processes and adopt best-business and personnel practices at the Centers of the Secretary concerned in connection with the capability requirements of the Centers, so as to serve as recognized leaders in such capabilities throughout the Department of Defense and in the national technology and industrial base.

(3) The Secretary of Defense, acting through the directors of the Centers, may conduct one or more pilot programs, consistent with applicable requirements of law, to test any practices referred to in paragraph (2) that the Directors determine could—

(A) improve the efficiency and effectiveness of operations at Centers;

(B) improve the support provided by the Centers for the elements of the Department of Defense who use the services of the Centers; and

(C) enhance capabilities by reducing the cost and improving the performance and efficiency of executing laboratory missions.

(b) PUBLIC-PRIVATE PARTNERSHIPS.—(1) To achieve one or more objectives set forth in paragraph (2), the Secretary may authorize and establish incentives for the Director of a Center to enter into public-private cooperative arrangements (in this section referred to as a “public-private partnership”) to provide for any of the following:

(A) For employees of the Center, academia, private industry, State and local governments, or other entities outside the Department of Defense to perform (under contract, sub-contract, or otherwise) work related to the capabilities of the Center, including any work that—

(i) involves one or more capabilities of the Center; and

(ii) may be applicable to both the Department and commercial entities.

(B) For private industry or other entities outside the Department of Defense to use for either Government or commercial purposes any capabilities of the Center that are not fully used for Department of Defense activities for any period determined to be consistent with the needs of the Department of Defense.

(2) The objectives for exercising the authority provided in paragraph (1) are as follows:

(A) To maximize the use of the capacity of a Center.

(B) To reduce or eliminate the cost of ownership of a Center by the Department of Defense.

(C) To reduce the cost of science, technology, and engineering activities of the Department of Defense.

(D) To leverage private sector investment in—

(i) such efforts as research and equipment recapitalization for a Center; and

(ii) the promotion of the undertaking of commercial business ventures based on the capabilities of a Center, as determined by the director of the Center.

(E) To foster cooperation and technology transfer between the armed forces, academia, private industry, and State and local governments.

(F) To increase access by a Center to a skilled technical workforce that can contribute to the effective and efficient execution of the missions of the Department of Defense.

(G) To increase the ability of a Center to access and use non-Department of Defense methods to develop and innovate and access capabilities that contribute to the effective and efficient execution of the missions of the Department of Defense.

(3)(A) Public-private partnerships entered into under paragraph (1) may be used for purposes relating to technology transfer and other authorities described in subparagraph (B).

(B) The authorities described in this subparagraph are provisions of law that provide for cooperation and partnership by the Department of Defense with academia, private industry, and State and local governments, including the following:

(i) Sections 3371 through 3375 of title 5.

(ii) Sections 2194, 2358, 2371, 2511, 2539b, and 2563 of this title.

(iii) Section 209 of title 35.

(iv) Sections 8, 12, and 23 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3706, 3710a, and 3715).

(c) PRIVATE SECTOR USE OF EXCESS CAPACITY.—Any capability of a Center made available to the private sector may be used to perform research and testing activities in order to make more efficient and economical use of Government-owned capabilities and encourage the creation and preservation of jobs to ensure the availability of a workforce with the necessary research and technical skills to meet the needs of the armed forces.

(d) CREDITING OF AMOUNTS FOR PERFORMANCE.—Amounts received by a Center for work performed under a public-private partnership may—

(1) be credited to the appropriation or fund, including a working-capital or revolving fund, that incurs the cost of performing the work; or

(2) be used by the Director of the Center as the Director considers appropriate and consistent with section 219 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417; 10 U.S.C. 2358 note).

(e) AVAILABILITY OF EXCESS CAPACITIES TO PRIVATE-SECTOR PARTNERS.—Capacities of a Center may be made available for use by a private-sector entity under this section only if—

(1) the use of the capacities will not have a significant adverse effect on the performance of the Center or the ability of the Center to achieve the mission of the Center, as determined by the Director of the Center; and

(2) the private-sector entity agrees—

(A) to reimburse the Department of Defense when required in accordance with the guidance of the Department for the direct and indirect costs (including any rental costs) that are attributable to the use of the capabilities by the private-sector entity, as

determined by the Secretary of the military departments; and

(B) to hold harmless and indemnify the United States from—

(i) any claim for damages or injury to any person or property arising out of the use of the capabilities, except under the circumstances described in section 2563(c)(3) of this title; and

(ii) any liability or claim for damages or injury to any person or property arising out of a decision by the Secretary to suspend or terminate that use of capabilities during a war or national emergency.

(f) CONSTRUCTION OF PROVISION.—Nothing in this section may be construed to authorize a change, otherwise prohibited by law, from the performance of work at a Center by personnel of the Department of Defense to performance by a contractor.

(g) DEFINITIONS.—In this section:

(1) The term “capabilities”, with respect to a Center for Science, Technology, and Engineering Partnership, means the facilities, equipment, personnel, intellectual property, and other assets that support the core competencies of the Center.

(2) The term “national technology and industrial base” has the meaning given that term in section 2500 of this title.

(3) The term “science and technology reinvention laboratory” means a science and technology reinvention laboratory designated under section 1105 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 10 U.S.C. 2358 note).

(Added Pub. L. 114–92, div. A, title II, §211(a), Nov. 25, 2015, 129 Stat. 764.)

PRIOR PROVISIONS

A prior section 2368, added Pub. L. 100–456, div. A, title VIII, §823(a)(1), Sept. 29, 1988, 102 Stat. 2018; amended Pub. L. 101–189, div. A, title VIII, §841(c)(1), Nov. 29, 1989, 103 Stat. 1514; Pub. L. 102–25, title VII, §701(g)(1), Apr. 6, 1991, 105 Stat. 115, which authorized studies in fields of research and development essential to development of critical technologies, was repealed by Pub. L. 102–190, div. A, title VIII, §821(c)(1), Dec. 5, 1991, 105 Stat. 1431.

[§ 2369. Repealed. Pub. L. 103–355, title III, § 3062(a), Oct. 13, 1994, 108 Stat. 3336]

Section, added Pub. L. 100–456, div. A, title VIII, §842(a), Sept. 29, 1988, 102 Stat. 2026; amended Pub. L. 103–160, div. A, title IX, §904(d)(1), Nov. 30, 1993, 107 Stat. 1728, related to program for supervision and coordination of product evaluation activities within the Department of Defense.

[§ 2370. Repealed. Pub. L. 104–106, div. A, title X, § 1061(j)(1), Feb. 10, 1996, 110 Stat. 443]

Section, added Pub. L. 101–510, div. A, title II, §241(a), Nov. 5, 1990, 104 Stat. 1516, required annual report to Congress on Biological Defense Research Program.

[§ 2370a. Repealed. Pub. L. 108–375, div. A, title X, § 1005(a), Oct. 28, 2004, 118 Stat. 2036]

Section, added Pub. L. 103–160, div. A, title II, §214(a), Nov. 30, 1993, 107 Stat. 1586, related to medical countermeasures against biowarfare threats and allocation of funding between near-term and other threats.

§ 2371. Research projects: transactions other than contracts and grants

(a) ADDITIONAL FORMS OF TRANSACTIONS AUTHORIZED.—The Secretary of Defense and the Secretary of each military department may enter into transactions (other than contracts, cooperative agreements, and grants) under the authority of this subsection in carrying out basic, applied, and advanced research projects. The authority under this subsection is in addition to the authority provided in section 2358 of this title to use contracts, cooperative agreements, and grants in carrying out such projects.

(b) EXERCISE OF AUTHORITY BY SECRETARY OF DEFENSE.—In any exercise of the authority in subsection (a), the Secretary of Defense shall act through the Defense Advanced Research Projects Agency or any other element of the Department of Defense that the Secretary may designate.

(c) ADVANCE PAYMENTS.—The authority provided under subsection (a) may be exercised without regard to section 3324 of title 31.

(d) RECOVERY OF FUNDS.—(1) A cooperative agreement for performance of basic, applied, or advanced research authorized by section 2358 of this title and a transaction authorized by subsection (a) may include a clause that requires a person or other entity to make payments to the Department of Defense or any other department or agency of the Federal Government as a condition for receiving support under the agreement or other transaction.

(2) The amount of any payment received by the Federal Government pursuant to a requirement imposed under paragraph (1) may be credited, to the extent authorized by the Secretary of Defense, to the appropriate account established under subsection (f). Amounts so credited shall be merged with other funds in the account and shall be available for the same purposes and the same period for which other funds in such account are available.

(e) CONDITIONS.—(1) The Secretary of Defense shall ensure that—

(A) to the maximum extent practicable, no cooperative agreement containing a clause under subsection (d) and no transaction entered into under subsection (a) provides for research that duplicates research being conducted under existing programs carried out by the Department of Defense; and

(B) to the extent that the Secretary determines practicable, the funds provided by the Government under a cooperative agreement containing a clause under subsection (d) or a transaction authorized by subsection (a) do not exceed the total amount provided by other parties to the cooperative agreement or other transaction.

(2) A cooperative agreement containing a clause under subsection (d) or a transaction authorized by subsection (a) may be used for a research project when the use of a standard contract, grant, or cooperative agreement for such project is not feasible or appropriate.

(f) SUPPORT ACCOUNTS.—There is hereby established on the books of the Treasury separate accounts for each of the military departments and the Defense Advanced Research Projects Agency

for support of research projects and development projects provided for in cooperative agreements containing a clause under subsection (d) and research projects provided for in transactions entered into under subsection (a). Funds in those accounts shall be available for the payment of such support.

(g) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section.

[(h) Repealed. Pub. L. 113–291, div. A, title X, § 1071(f)(20), Dec. 19, 2014, 128 Stat. 3511.]

(i) PROTECTION OF CERTAIN INFORMATION FROM DISCLOSURE.—(1) Disclosure of information described in paragraph (2) is not required, and may not be compelled, under section 552 of title 5 for five years after the date on which the information is received by the Department of Defense.

(2)(A) Paragraph (1) applies to information described in subparagraph (B) that is in the records of the Department of Defense if the information was submitted to the Department in a competitive or noncompetitive process having the potential for resulting in an award, to the party submitting the information, of a cooperative agreement for performance of basic, applied, or advanced research authorized by section 2358 of this title or another transaction authorized by subsection (a).

(B) The information referred to in subparagraph (A) is the following:

- (i) A proposal, proposal abstract, and supporting documents.
- (ii) A business plan submitted on a confidential basis.
- (iii) Technical information submitted on a confidential basis.

(Added Pub. L. 101–189, div. A, title II, § 251(a)(1), Nov. 29, 1989, 103 Stat. 1403; amended Pub. L. 101–510, div. A, title XIV, § 1484(k)(9), Nov. 5, 1990, 104 Stat. 1719; Pub. L. 102–190, div. A, title VIII, § 826, Dec. 5, 1991, 105 Stat. 1442; Pub. L. 102–484, div. A, title II, § 217, Oct. 23, 1992, 106 Stat. 2352; Pub. L. 103–35, title II, § 201(c)(4), May 31, 1993, 107 Stat. 98; Pub. L. 103–160, div. A, title VIII, § 827(b), title XI, § 1182(a)(6), Nov. 30, 1993, 107 Stat. 1712, 1771; Pub. L. 103–355, title I, § 1301(b), Oct. 13, 1994, 108 Stat. 3285; Pub. L. 104–106, div. A, title XV, § 1502(a)(1), Feb. 10, 1996, 110 Stat. 502; Pub. L. 104–201, div. A, title II, § 267(a)–(c)(1)(A), title X, § 1073(e)(1)(B), Sept. 23, 1996, 110 Stat. 2467, 2468, 2658; Pub. L. 105–85, div. A, title VIII, § 832, Nov. 18, 1997, 111 Stat. 1842; Pub. L. 105–261, div. A, title VIII, § 817, Oct. 17, 1998, 112 Stat. 2089; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 108–136, div. A, title X, § 1031(a)(19), Nov. 24, 2003, 117 Stat. 1597; Pub. L. 113–291, div. A, title X, § 1071(f)(20), Dec. 19, 2014, 128 Stat. 3511.)

AMENDMENTS

2014—Subsec. (h). Pub. L. 113–291 struck out subsec. (h) which related to annual report on use of certain cooperative agreements and transactions.

2003—Subsec. (h)(3). Pub. L. 108–136 added par. (3).

1999—Subsec. (h)(1). Pub. L. 106–65 substituted “and the Committee on Armed Services” for “and the Committee on National Security” in introductory provisions.

1998—Subsec. (i)(2)(A). Pub. L. 105–261 substituted “cooperative agreement for performance of basic, applied, or advanced research authorized by section 2358

of this title” for “cooperative agreement that includes a clause described in subsection (d)”.

1997—Subsec. (i). Pub. L. 105–85 added subsec. (i).

1996—Subsec. (b). Pub. L. 104–201, § 1073(e)(1)(B), inserted “Defense” before “Advanced Research Projects Agency”.

Subsec. (e). Pub. L. 104–201, § 267(a), inserted “(1)” before “The Secretary of Defense”, redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, inserted “and” after semicolon at end of subpar. (A), substituted a period for “; and” at end of subpar. (B), added par. (2), and struck out par. (3) which read as follows: “a cooperative agreement containing a clause under subsection (d) or a transaction authorized under subsection (a) is used for a research project only when the use of a standard contract, grant, or cooperative agreement for such project is not feasible or appropriate.”

Subsec. (f). Pub. L. 104–201, § 1073(e)(1)(B), inserted “Defense” before “Advanced Research Projects Agency”.

Subsec. (h). Pub. L. 104–201, § 267(b), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “Not later than 60 days after the end of each fiscal year, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives a report on all cooperative agreements entered into under section 2358 of this title during such fiscal year that contain a clause authorized by subsection (d) and on all transactions entered into under subsection (a) during such fiscal year. The report shall contain, with respect to each such cooperative agreement and transaction, the following:

“(1) A general description of the cooperative agreement or other transaction (as the case may be), including the technologies for which research is provided for under such agreement or transaction.

“(2) The potential military and, if any, commercial utility of such technologies.

“(3) The reasons for not using a contract or grant to provide support for such research.

“(4) The amount of the payments, if any, that were received by the Federal Government during the fiscal year covered by the report pursuant to a clause included in such cooperative agreement or other transaction pursuant to subsection (d).

“(5) The amount of the payments reported under paragraph (4), if any, that were credited to each account established under subsection (f).”

Pub. L. 104–106 substituted “Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives” for “Committees on Armed Services of the Senate and House of Representatives”.

Subsec. (i). Pub. L. 104–201, § 1073(e)(1)(B), which directed amendment of subsec. (i) by inserting “Defense” before “Advanced Research Projects Agency”, could not be executed because of the renumbering of subsec. (i) as section 2371a of this title by Pub. L. 104–201, § 267(c)(1)(A). See below.

Pub. L. 104–201, § 267(c)(1)(A), renumbered subsec. (i) of this section as section 2371a of this title.

1994—Pub. L. 103–355 amended section generally. Prior to amendment section related to cooperative agreements and other transactions for advanced research projects.

1993—Subsec. (a). Pub. L. 103–160, § 827(b)(1)(C), substituted “section 2358 of this title” for “subsection (a)” in par. (1) and “subsection (d)” for “subsection (e)” in par. (2).

Pub. L. 103–160, § 827(b)(1)(A), (B), redesignated subsec. (b) as (a) and struck out former subsec. (a), as amended by Pub. L. 103–160, § 1182(a)(6), (h), which read as follows: “The Secretary of Defense, in carrying out advanced research projects through the Advanced Research Projects Agency, and the Secretary of each military department, in carrying out advanced research projects, may enter into cooperative agreements and

other transactions with any person, any agency or instrumentality of the United States, any unit of State or local government, any educational institution, and any other entity.”

Pub. L. 103-160, § 1182(a)(6), substituted “Advanced Research Projects Agency” for “Defense Advanced Research Projects Agency”.

Subsec. (b). Pub. L. 103-160, § 827(b)(1)(B), redesignated subsec. (c) as (b). Former subsec. (b) redesignated (a).

Subsec. (c). Pub. L. 103-160, § 827(b)(1)(B), (2)(A), redesignated subsec. (d) as (c) and inserted “and development” after “research” in two places in par. (1). Former subsec. (c) redesignated (b).

Subsec. (d). Pub. L. 103-160, § 827(b)(1)(B), (D), (2)(B), redesignated subsec. (e), as amended by Pub. L. 103-160, § 1182(a)(6), (h), as (d) and substituted “section 2358 of this title” for “subsection (a)” and “research and development” for “advanced research”. Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 103-160, § 827(b)(1)(B), (E), (2)(B), (C), redesignated subsec. (f) as (e), in par. (1) substituted “research and development are” for “advanced research is”, in par. (3) substituted “research and development” for “advanced research”, in par. (4) substituted “subsection (a)” for “subsection (b)”, and in par. (5) substituted “subsection (d)” for “subsection (e)”. Former subsec. (e) redesignated (d).

Pub. L. 103-160, § 1182(a)(6), substituted “Advanced Research Projects Agency” for “Defense Advanced Research Projects Agency”.

Subsec. (f). Pub. L. 103-160, § 827(b)(1)(B), redesignated subsec. (g), as amended by Pub. L. 103-160, § 1182(a)(6), (h), as (f). Former subsec. (f) redesignated (e).

Subsec. (g). Pub. L. 103-160, § 827(b)(1)(B), redesignated subsec. (g), as amended by Pub. L. 103-160, § 1182(a)(6), (h), as (f).

Pub. L. 103-160, § 1182(a)(6), substituted “Advanced Research Projects Agency” for “Defense Advanced Research Projects Agency”.

Pub. L. 103-35 substituted “granted by section 12” for “granted by section 11” and “provisions of sections 11 and 12” for “provisions of sections 10 and 11”.

1992—Subsec. (g). Pub. L. 102-484 added subsec. (g).

1991—Subsec. (a). Pub. L. 102-190, § 826(a), inserted “and the Secretary of each military department, in carrying out advanced research projects.”.

Subsec. (b)(1). Pub. L. 102-190, § 826(b)(1)(A), struck out “by the Secretary” after “transactions entered into”.

Subsec. (b)(2). Pub. L. 102-190, § 826(b)(1)(B), substituted “to the appropriate account” for “to the account”.

Subsec. (d). Pub. L. 102-190, § 826(b)(2), substituted “The Secretary of Defense” for “The Secretary” in introductory provisions.

Subsec. (e). Pub. L. 102-190, § 826(b)(3), substituted “separate accounts for each of the military departments and the Defense Advanced Research Projects Agency” for “an account” and “those accounts” for “such account”.

Subsec. (f)(5). Pub. L. 102-190, § 826(b)(4), substituted “each account” for “the account”.

Subsec. (g). Pub. L. 102-190, § 826(c), struck out subsec. (g) which read as follows: “The authority of the Secretary to enter into cooperative agreements and other transactions under this section expires at the close of September 30, 1991.”

1990—Subsec. (f). Pub. L. 101-510 substituted “Committees on” for “Committees of” in introductory provisions.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103-355, see section 10001 of Pub. L. 103-355, set out as a note under section 2302 of this title.

AUTHORITY OF DEFENSE ADVANCED RESEARCH PROJECTS AGENCY TO CARRY OUT CERTAIN PROTOTYPE PROJECTS

Pub. L. 103-160, div. A, title VIII, § 845, Nov. 30, 1993, 107 Stat. 1721, as amended by Pub. L. 104-201, div. A,

title VIII, § 804, title X, § 1073(e)(1)(D), (2)(A), Sept. 23, 1996, 110 Stat. 2605, 2658; Pub. L. 105-261, div. A, title II, § 241, Oct. 17, 1998, 112 Stat. 1954; Pub. L. 106-65, div. A, title VIII, § 801, title X, § 1066(d)(6), Oct. 5, 1999, 113 Stat. 700, 773; Pub. L. 106-398, § 1 [[div. A], title VIII, §§ 803, 804(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A-205, 1654A-206; Pub. L. 107-107, div. A, title VIII, § 822, title X, § 1048(i)(2), Dec. 28, 2001, 115 Stat. 1182, 1229; Pub. L. 108-136, div. A, title VIII, § 847, Nov. 24, 2003, 117 Stat. 1554; Pub. L. 109-163, div. A, title VIII, § 823, Jan. 6, 2006, 119 Stat. 3387; Pub. L. 109-364, div. A, title VIII, § 855, Oct. 17, 2006, 120 Stat. 2347; Pub. L. 110-181, div. A, title VIII, § 823, title X, § 1063(h), Jan. 28, 2008, 122 Stat. 226, 324; Pub. L. 110-417, [div. A], title VIII, § 824, Oct. 14, 2008, 122 Stat. 4533; Pub. L. 111-383, div. A, title VIII, §§ 826, 866(g)(2), Jan. 7, 2011, 124 Stat. 4270, 4298; Pub. L. 112-239, div. A, title VIII, § 863, Jan. 2, 2013, 126 Stat. 1860; Pub. L. 113-291, div. A, title VIII, § 812, title X, § 1071(b)(13), Dec. 19, 2014, 128 Stat. 3429, 3507, which authorized certain officials, as designated by the Secretary of Defense, to carry out prototype projects directly relevant to enhancing the mission effectiveness of military personnel and the supporting platforms, systems, components, or materials proposed to be acquired or developed by or in use by the Department of Defense, was repealed by Pub. L. 114-92, div. A, title VIII, § 815(c), Nov. 25, 2015, 129 Stat. 896.

[Pub. L. 114-92, div. A, title VIII, § 815(c), Nov. 25, 2015, 129 Stat. 896, provided that: “Section 845 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103-160; 10 U.S.C. 2371 note) [formerly set out above] is hereby repealed. Transactions entered into under the authority of such section 845 shall remain in force and effect and shall be modified as appropriate to reflect the amendments made by this section [enacting section 2371b of this title, amending section 2302 of this title, and amending provisions set out as a note under section 2358 of this title].”]

§ 2371a. Cooperative research and development agreements under Stevenson-Wydler Technology Innovation Act of 1980

The Secretary of Defense, in carrying out research projects through the Defense Advanced Research Projects Agency, and the Secretary of each military department, in carrying out research projects, may permit the director of any federally funded research and development center to enter into cooperative research and development agreements with any person, any agency or instrumentality of the United States, any unit of State or local government, and any other entity under the authority granted by section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a). Technology may be transferred to a non-Federal party to such an agreement consistent with the provisions of sections 11 and 12 of such Act (15 U.S.C. 3710, 3710a).

(Added and amended Pub. L. 104-201, div. A, title II, § 267(c)(1)(A), (B), Sept. 23, 1996, 110 Stat. 2468; Pub. L. 105-85, div. A, title X, § 1073(a)(50), Nov. 18, 1997, 111 Stat. 1903.)

CODIFICATION

The text of section 2371(i) of this title, which was transferred to this section, redesignated as text of section, and amended by Pub. L. 104-201, § 267(c)(1)(A), (B), was based on Pub. L. 103-355, title I, § 1301(b), Oct. 13, 1994, 108 Stat. 3286.

AMENDMENTS

1997—Pub. L. 105-85 inserted “Defense” before “Advanced Research Projects Agency”.

1996—Pub. L. 104-201 transferred section 2371(i) of this title to this section, added section catchline, and

struck out subsec. (i) designation and heading which read as follows: “Cooperative Research and Development Agreements Under Stevenson-Wydler Technology Innovation Act of 1980”. See Codification note above.

§ 2371b. Authority of the Department of Defense to carry out certain prototype projects

(a) **AUTHORITY.**—(1) Subject to paragraph (2), the Director of the Defense Advanced Research Projects Agency, the Secretary of a military department, or any other official designated by the Secretary of Defense may, under the authority of section 2371 of this title, carry out prototype projects that are directly relevant to enhancing the mission effectiveness of military personnel and the supporting platforms, systems, components, or materials proposed to be acquired or developed by the Department of Defense, or to improvement of platforms, systems, components, or materials in use by the armed forces.

(2) The authority of this section—

(A) may be exercised for a prototype project that is expected to cost the Department of Defense in excess of \$50,000,000 but not in excess of \$250,000,000 (including all options) only upon a written determination by the senior procurement executive for the agency as designated for the purpose of section 1702(c) of title 41, or, for the Defense Advanced Research Projects Agency or the Missile Defense Agency, the director of the agency that—

(i) the requirements of subsection (d) will be met; and

(ii) the use of the authority of this section is essential to promoting the success of the prototype project; and

(B) may be exercised for a prototype project that is expected to cost the Department of Defense in excess of \$250,000,000 (including all options) only if—

(i) the Under Secretary of Defense for Acquisition, Technology, and Logistics determines in writing that—

(I) the requirements of subsection (d) will be met; and

(II) the use of the authority of this section is essential to meet critical national security objectives; and

(ii) the congressional defense committees are notified in writing at least 30 days before such authority is exercised.

(3) The authority of a senior procurement executive or director of the Defense Advanced Research Projects Agency or Missile Defense Agency under paragraph (2)(A), and the authority of the Under Secretary of Defense for Acquisition, Technology, and Logistics under paragraph (2)(B), may not be delegated.

(b) **EXERCISE OF AUTHORITY.**—

(1) Subsections (e)(1)(B) and (e)(2) of such section 2371 shall not apply to projects carried out under subsection (a).

(2) To the maximum extent practicable, competitive procedures shall be used when entering into agreements to carry out projects under subsection (a).

(c) **COMPTROLLER GENERAL ACCESS TO INFORMATION.**—(1) Each agreement entered into by an

official referred to in subsection (a) to carry out a project under that subsection that provides for payments in a total amount in excess of \$5,000,000 shall include a clause that provides for the Comptroller General, in the discretion of the Comptroller General, to examine the records of any party to the agreement or any entity that participates in the performance of the agreement.

(2) The requirement in paragraph (1) shall not apply with respect to a party or entity, or a subordinate element of a party or entity, that has not entered into any other agreement that provides for audit access by a Government entity in the year prior to the date of the agreement.

(3)(A) The right provided to the Comptroller General in a clause of an agreement under paragraph (1) is limited as provided in subparagraph (B) in the case of a party to the agreement, an entity that participates in the performance of the agreement, or a subordinate element of that party or entity if the only agreements or other transactions that the party, entity, or subordinate element entered into with Government entities in the year prior to the date of that agreement are cooperative agreements or transactions that were entered into under this section or section 2371 of this title.

(B) The only records of a party, other entity, or subordinate element referred to in subparagraph (A) that the Comptroller General may examine in the exercise of the right referred to in that subparagraph are records of the same type as the records that the Government has had the right to examine under the audit access clauses of the previous agreements or transactions referred to in such subparagraph that were entered into by that particular party, entity, or subordinate element.

(4) The head of the contracting activity that is carrying out the agreement may waive the applicability of the requirement in paragraph (1) to the agreement if the head of the contracting activity determines that it would not be in the public interest to apply the requirement to the agreement. The waiver shall be effective with respect to the agreement only if the head of the contracting activity transmits a notification of the waiver to Congress and the Comptroller General before entering into the agreement. The notification shall include the rationale for the determination.

(5) The Comptroller General may not examine records pursuant to a clause included in an agreement under paragraph (1) more than three years after the final payment is made by the United States under the agreement.

(d) **APPROPRIATE USE OF AUTHORITY.**—(1) The Secretary of Defense shall ensure that no official of an agency enters into a transaction (other than a contract, grant, or cooperative agreement) for a prototype project under the authority of this section unless one of the following conditions is met:

(A) There is at least one nontraditional defense contractor participating to a significant extent in the prototype project.

(B) All significant participants in the transaction other than the Federal Government are small businesses or nontraditional defense contractors.

(C) At least one third of the total cost of the prototype project is to be paid out of funds provided by parties to the transaction other than the Federal Government.

(D) The senior procurement executive for the agency determines in writing that exceptional circumstances justify the use of a transaction that provides for innovative business arrangements or structures that would not be feasible or appropriate under a contract, or would provide an opportunity to expand the defense supply base in a manner that would not be practical or feasible under a contract.

(2)(A) Except as provided in subparagraph (B), the amounts counted for the purposes of this subsection as being provided, or to be provided, by a party to a transaction with respect to a prototype project that is entered into under this section other than the Federal Government do not include costs that were incurred before the date on which the transaction becomes effective.

(B) Costs that were incurred for a prototype project by a party after the beginning of negotiations resulting in a transaction (other than a contract, grant, or cooperative agreement) with respect to the project before the date on which the transaction becomes effective may be counted for purposes of this subsection as being provided, or to be provided, by the party to the transaction if and to the extent that the official responsible for entering into the transaction determines in writing that—

(i) the party incurred the costs in anticipation of entering into the transaction; and

(ii) it was appropriate for the party to incur the costs before the transaction became effective in order to ensure the successful implementation of the transaction.

(e) DEFINITIONS.—In this section:

(1) The term “nontraditional defense contractor” has the meaning given the term under section 2302(9) of this title.

(2) The term “small business” means a small business concern as defined under section 3 of the Small Business Act (15 U.S.C. 632).

(f) FOLLOW-ON PRODUCTION CONTRACTS OR TRANSACTIONS.—(1) A transaction entered into under this section for a prototype project may provide for the award of a follow-on production contract or transaction to the participants in the transaction.

(2) A follow-on production contract or transaction provided for in a transaction under paragraph (1) may be awarded to the participants in the transaction without the use of competitive procedures, notwithstanding the requirements of section 2304 of this title, if—

(A) competitive procedures were used for the selection of parties for participation in the transaction; and

(B) the participants in the transaction successfully completed the prototype project provided for in the transaction.

(3) Contracts and transactions entered into pursuant to this subsection may be awarded using the authority in subsection (a), under the authority of chapter 137 of this title, or under such procedures, terms, and conditions as the

Secretary of Defense may establish by regulation.

(g) AUTHORITY TO PROVIDE PROTOTYPES AND FOLLOW-ON PRODUCTION ITEMS AS GOVERNMENT-FURNISHED EQUIPMENT.—An agreement entered into pursuant to the authority of subsection (a) or a follow-on contract or transaction entered into pursuant to the authority of subsection (f) may provide for prototypes or follow-on production items to be provided to another contractor as Government-furnished equipment.

(h) APPLICABILITY OF PROCUREMENT ETHICS REQUIREMENTS.—An agreement entered into under the authority of this section shall be treated as a Federal agency procurement for the purposes of chapter 21 of title 41.

(Added Pub. L. 114-92, div. A, title VIII, §815(a)(1), Nov. 25, 2015, 129 Stat. 893.)

UPDATED GUIDANCE

Pub. L. 114-92, div. A, title VIII, §815(e), Nov. 25, 2015, 129 Stat. 896, provided that: “Not later than 180 days after the date of the enactment of this Act [Nov. 25, 2015], the Secretary of Defense shall issue updated guidance to implement the amendments made by this section [enacting this section, amending section 2302 of this title, amending provisions set out as a note under section 2358 of this title, and repealing provisions set out as a note under section 2371 of this title].”

§ 2372. Independent research and development and bid and proposal costs: payments to contractors

(a) REGULATIONS.—The Secretary of Defense shall prescribe regulations governing the payment, by the Department of Defense, of expenses incurred by contractors for independent research and development and bid and proposal costs.

(b) COSTS ALLOWABLE AS INDIRECT EXPENSES.—The regulations prescribed pursuant to subsection (a) shall provide that independent research and development and bid and proposal costs shall be allowable as indirect expenses on covered contracts to the extent that those costs are allocable, reasonable, and not otherwise unallowable by law or under the Federal Acquisition Regulation.

(c) ADDITIONAL CONTROLS.—Subject to subsection (f), the regulations prescribed pursuant to subsection (a) may include the following provisions:

(1) A limitation on the allowability of independent research and development and bid and proposal costs to work which the Secretary of Defense determines is of potential interest to the Department of Defense.

(2) For each of fiscal years 1993 through 1995, a limitation in the case of major contractors that the total amount of the independent research and development and bid and proposal costs that are allowable as expenses of the contractor’s covered segments may not exceed the contractor’s adjusted maximum reimbursement amount.

(3) Implementation of regular methods for transmission—

(A) from the Department of Defense to contractors, in a reasonable manner, of timely and comprehensive information regarding planned or expected Department of Defense future needs; and

(B) from contractors to the Department of Defense, in a reasonable manner, of information regarding progress by the contractor on the contractor's independent research and development programs.

(d) **ADJUSTED MAXIMUM REIMBURSEMENT AMOUNT.**—For purposes of subsection (c)(2), the adjusted maximum reimbursement amount for a major contractor for a fiscal year is the sum of—

(1) the total amount of the allowable independent research and development and bid and proposal costs incurred by the contractor during the preceding fiscal year;

(2) 5 percent of the amount referred to in paragraph (1); and

(3) if the projected total amount of the independent research and development and bid and proposal costs incurred by the contractor for the preceding fiscal year, the amount that is determined by multiplying the amount referred to in paragraph (1) by the lesser of—

(A) the percentage by which the projected total amount of such incurred costs for such fiscal year exceeds the total amount of the incurred costs of the contractor for the preceding fiscal year; or

(B) the estimated percentage rate of inflation from the end of the preceding fiscal year to the end of the fiscal year for which the amount of the limitation is being computed.

(e) **WAIVER OF ADJUSTED MAXIMUM REIMBURSEMENT AMOUNT.**—The Secretary of Defense may waive the applicability of any limitation prescribed under subsection (c)(2) to any contractor for a fiscal year to the extent that the Secretary determines that allowing the contractor to exceed the contractor's adjusted maximum reimbursement amount for such year—

(1) is necessary to reimburse such contractor at least to the extent that would have been allowed under regulations as in effect on December 4, 1991; or

(2) is otherwise in the best interest of the Government.

(f) **LIMITATIONS ON REGULATIONS.**—Regulations prescribed pursuant to subsection (c) may not include provisions that would infringe on the independence of a contractor to choose which technologies to pursue in its independent research and development program.

(g) **ENCOURAGEMENT OF CERTAIN CONTRACTOR ACTIVITIES.**—The regulations under subsection (a) shall encourage contractors to engage in research and development activities of potential interest to the Department of Defense, including activities intended to accomplish any of the following:

(1) Enabling superior performance of future United States weapon systems and components.

(2) Reducing acquisition costs and life-cycle costs of military systems.

(3) Strengthening the defense industrial base and the technology base of the United States.

(4) Enhancing the industrial competitiveness of the United States.

(5) Promoting the development of technologies identified as critical under section 2506 of this title.

(6) Increasing the development and promotion of efficient and effective applications of dual-use technologies.

(7) Providing efficient and effective technologies for achieving such environmental benefits as improved environmental data gathering, environmental cleanup and restoration, pollution reduction in manufacturing, environmental conservation, and environmentally safe management of facilities.

(h) **MAJOR CONTRACTORS.**—A contractor shall be considered to be a major contractor for the purposes of subsection (c) for any fiscal year if for the preceding fiscal year the contractor's covered segments allocated to Department of Defense contracts a total of more than \$10,000,000 in independent research and development and bid and proposal costs.

(i) **DEFINITIONS.**—In this section:

(1) **COVERED CONTRACT.**—The term “covered contract” has the meaning given that term in section 2324(f) of this title.

(2) **COVERED SEGMENT.**—The term “covered segment”, with respect to a contractor, means a product division of the contractor that allocated more than \$1,000,000 in independent research and development and bid and proposal costs to Department of Defense contracts during the preceding fiscal year. In the case of a contractor that has no product divisions, such term means the contractor as a whole.

(Added Pub. L. 101-510, div. A, title VIII, §824(a)(1), Nov. 5, 1990, 104 Stat. 1603; amended Pub. L. 102-25, title VII, §701(c), Apr. 6, 1991, 105 Stat. 113; Pub. L. 102-190, div. A, title VIII, §802(a)(1), Dec. 5, 1991, 105 Stat. 1412; Pub. L. 102-484, div. A, title X, §1052(27), Oct. 23, 1992, 106 Stat. 2500; Pub. L. 103-35, title II, §201(c)(5), May 31, 1993, 107 Stat. 98; Pub. L. 104-106, div. D, title XLIII, §4321(b)(11), Feb. 10, 1996, 110 Stat. 672.)

AMENDMENTS

1996—Subsec. (i)(1). Pub. L. 104-106 substituted “2324(f)” for “2324(m)”.

1993—Subsec. (g)(5). Pub. L. 103-35 substituted “section 2506” for “section 2522”.

1992—Subsec. (e)(1). Pub. L. 102-484 substituted “on December 4, 1991” for “on the day before the date of the enactment of the National Defense Authorization Act for Fiscal Years 1992 and 1993”.

1991—Pub. L. 102-190 substituted section catchline for one which read “Independent research and development” and amended text generally, substituting present provisions for provisions authorizing payment of independent research and development or bid and proposal costs, encouraging contractors to engage in research and development activities, and authorizing advance agreements regarding the manner and extent in which the Department of Defense may pay independent research and development costs or bid and proposal costs.

Subsec. (d)(2)(B). Pub. L. 102-25 substituted “subsection (b), including” for “subsection (b) or”.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104-106, see section 4401 of Pub. L. 104-106, set out as a note under section 2302 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102-190, div. A, title VIII, §802(e), Dec. 5, 1991, 105 Stat. 1414, provided that: “The amendments made by this section [amending this section and section 2330 of this title] shall take effect on October 1, 1992, and shall apply to independent research and development and bid and proposal costs incurred by a contractor during fiscal years of that contractor that begin on or after that date.”

REGULATIONS

Pub. L. 102-190, div. A, title VIII, §802(b), Dec. 5, 1991, 105 Stat. 1414, provided that: “The Secretary of Defense shall prescribe proposed regulations to implement the amendment made by subsection (a)(1) [amending this section] not later than April 1, 1992, and shall prescribe final regulations for that purpose not later than June 1, 1992.”

STUDY BY OFFICE OF TECHNOLOGY ASSESSMENT

Pub. L. 102-190, div. A, title VIII, §802(c), Dec. 5, 1991, 105 Stat. 1414, directed Director of the Office of Technology Assessment to conduct a study to determine effect of regulations prescribed under this section on the achievement of policy stated in subsec. (g) of this section and submit a report containing results of such study to Committees on Armed Services of Senate and House of Representatives not later than Dec. 1, 1995, prior to repeal by Pub. L. 103-160, div. A, title II, §266, Nov. 30, 1993, 107 Stat. 1611.

§ 2373. Procurement for experimental purposes

(a) **AUTHORITY.**—The Secretary of Defense and the Secretaries of the military departments may each buy ordnance, signal, chemical activity, transportation, energy, medical, space-flight, and aeronautical supplies, including parts and accessories, and designs thereof, that the Secretary of Defense or the Secretary concerned considers necessary for experimental or test purposes in the development of the best supplies that are needed for the national defense.

(b) **PROCEDURES.**—Purchases under this section may be made inside or outside the United States and by contract or otherwise. Chapter 137 of this title applies only when such purchases are made in quantities greater than necessary for experimentation, technical evaluation, assessment of operational utility, or safety or to provide a residual operational capability.

(Added Pub. L. 103-160, div. A, title VIII, §822(c)(1), Nov. 30, 1993, 107 Stat. 1706; amended Pub. L. 103-337, div. A, title X, §1070(g), Oct. 5, 1994, 108 Stat. 2859; Pub. L. 104-106, div. A, title VIII, §812, Feb. 10, 1996, 110 Stat. 395; Pub. L. 114-92, div. A, title VIII, §814, Nov. 25, 2015, 129 Stat. 893.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 4504 and 9504 of this title, prior to repeal by Pub. L. 103-160, §822(c)(2).

AMENDMENTS

2015—Subsec. (a). Pub. L. 114-92, §814(a), inserted “transportation, energy, medical, space-flight,” before “and aeronautical supplies”.

Subsec. (b). Pub. L. 114-92, §814(b), substituted “only when such purchases are made in quantities greater than necessary for experimentation, technical evaluation, assessment of operational utility, or safety or to provide a residual operational capability” for “only when such purchases are made in quantity”.

1996—Subsec. (b). Pub. L. 104-106 inserted “only” after “applies” in second sentence.

1994—Subsec. (a). Pub. L. 103-337 substituted “chemical activity, and aeronautical supplies,” for “and chemical activity supplies.”

§ 2374. Merit-based award of grants for research and development

(a) It is the policy of Congress that an agency named in section 2303(a) of this title should not be required by legislation to award a new grant for research, development, test, or evaluation to a non-Federal Government entity. It is further the policy of Congress that any program, project, or technology identified in legislation be awarded through merit-based selection procedures.

(b) A provision of law may not be construed as requiring a new grant to be awarded to a specified non-Federal Government entity unless that provision of law—

(1) specifically refers to this subsection;

(2) specifically identifies the particular non-Federal Government entity involved; and

(3) specifically states that the award to that entity is required by such provision of law in contravention of the policy set forth in subsection (a).

(c) For purposes of this section, a grant is a new grant unless the work provided for in the grant is a continuation of the work performed by the specified entity under a preceding grant.

(d) This section shall not apply with respect to any grant that calls upon the National Academy of Sciences to investigate, examine, or experiment upon any subject of science or art of significance to an agency named in section 2303(a) of this title and to report on such matters to the Congress or any agency of the Federal Government.

(Added Pub. L. 103-355, title VII, §7203(a)(2), Oct. 13, 1994, 108 Stat. 3380.)

EFFECTIVE DATE

For effective date and applicability of section, see section 10001 of Pub. L. 103-355, set out as an Effective Date of 1994 Amendment note under section 2302 of this title.

§ 2374a. Prizes for advanced technology achievements

(a) **AUTHORITY.**—The Secretary of Defense, acting through the Assistant Secretary of Defense for Research and Engineering and the service acquisition executive for each military department, may carry out programs to award cash prizes in recognition of outstanding achievements in basic, advanced, and applied research, technology development, and prototype development that have the potential for application to the performance of the military missions of the Department of Defense.

(b) **COMPETITION REQUIREMENTS.**—Each program under subsection (a) shall use a competitive process for the selection of recipients of cash prizes. The process shall include the widely-advertised solicitation of submissions of research results, technology developments, and prototypes.

(c) **LIMITATIONS.**—(1) No prize competition may result in the award of a cash prize of more than \$10,000,000.

(2) No prize competition may result in the award of more than \$1,000,000 in cash prizes without the approval of the Under Secretary of Defense for Acquisition, Technology, and Logistics.

(d) RELATIONSHIP TO OTHER AUTHORITY.—A program under subsection (a) may be carried out in conjunction with or in addition to the exercise of any other authority of an official referred to in that subsection to acquire, support, or stimulate basic, advanced and applied research, technology development, or prototype projects.

(e) ACCEPTANCE OF FUNDS.—In addition to such sums as may be appropriated or otherwise made available to the Secretary to award prizes under this section, the Secretary may accept funds from other departments and agencies of the Federal Government, and from State and local governments, to award prizes under this section.

(f) PERIOD OF AUTHORITY.—The authority to award prizes under subsection (a) shall terminate at the end of September 30, 2018.

(Added Pub. L. 106-65, div. A, title II, §244(a), Oct. 5, 1999, 113 Stat. 552; amended Pub. L. 107-314, div. A, title II, §248(a), Dec. 2, 2002, 116 Stat. 2502; Pub. L. 108-136, div. A, title X, §1031(a)(20), Nov. 24, 2003, 117 Stat. 1598; Pub. L. 109-163, div. A, title II, §257, Jan. 6, 2006, 119 Stat. 3184; Pub. L. 109-364, div. A, title II, §212, Oct. 17, 2006, 120 Stat. 2119; Pub. L. 111-84, div. A, title II, §253, Oct. 28, 2009, 123 Stat. 2243; Pub. L. 111-383, div. A, title IX, §901(j)(4), Jan. 7, 2011, 124 Stat. 4324; Pub. L. 113-66, div. A, title II, §263, Dec. 26, 2013, 127 Stat. 726; Pub. L. 113-291, div. A, title II, §211, Dec. 19, 2014, 128 Stat. 3324; Pub. L. 114-92, div. A, title X, §1079(a), Nov. 25, 2015, 129 Stat. 999.)

AMENDMENTS

2015—Subsecs. (f), (g). Pub. L. 114-92, §1079(a), which purported to repeal the annual reporting requirement on prizes for advanced technology achievements by directing the striking of subsec. (e) and redesignation of subsec. (f) as (e), was executed by striking subsec. (f), relating to biennial reports, and redesignating subsec. (g) as (f) to reflect the probable intent of Congress and the intervening amendments made by Pub. L. 113-291, §211(b)(1), (c), which had redesignated subsec. (e) as (f) and changed the reporting requirement from annual to biennial. See 2014 Amendment notes below.

2014—Subsec. (c)(1). Pub. L. 113-291, §211(a), substituted “No prize competition may result in the award of a cash prize of more than \$10,000,000.” for “The total amount made available for award of cash prizes in a fiscal year may not exceed \$10,000,000.”

Subsec. (e). Pub. L. 113-291, §211(b)(2), added subsec. (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 113-291, §211(c)(3), substituted “BIENNIAL” for “ANNUAL” in heading.

Pub. L. 113-291, §211(b)(1), redesignated subsec. (e) as (f). Former subsec. (f) redesignated (g).

Subsec. (f)(1). Pub. L. 113-291, §211(c)(1), substituted “every other year” for “each year” and “two fiscal years” for “fiscal year”.

Subsec. (f)(2). Pub. L. 113-291, §211(c)(2), substituted “a period of two fiscal years” for “a fiscal year” in introductory provisions.

Subsec. (g). Pub. L. 113-291, §211(b)(1), redesignated subsec. (f) as (g).

2013—Subsec. (f). Pub. L. 113-66 substituted “September 30, 2018” for “September 30, 2013”.

2011—Subsec. (a). Pub. L. 111-383 substituted “Assistant Secretary of Defense for Research and Engineering” for “Director of Defense Research and Engineering”.

2009—Subsec. (f). Pub. L. 111-84 substituted “2013” for “2010”.

2006—Subsec. (a). Pub. L. 109-364, §212(a)(1), substituted “Director of Defense Research and Engineering and the service acquisition executive for each military department” for “Director of the Defense Advanced Research Projects Agency” and “programs” for “a program”.

Subsec. (b). Pub. L. 109-364, §212(a)(2)(A), substituted “Each program” for “The program”.

Subsec. (d). Pub. L. 109-364, §212(a)(2)(B), substituted “A program” for “The program” and “an official referred to in that subsection” for “the Director”.

Subsec. (e). Pub. L. 109-364, §212(c), reenacted heading without change and amended text generally. Prior to amendment, subsec. (e) required an annual report, which included the results of consultations between the Director and officials of the military departments, a description of goals, cash prizes, methods used for submissions, a description of resources, and a description of transition plans.

Pub. L. 109-163 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “Promptly after the end of each fiscal year during which one or more prizes are awarded under the program under subsection (a), the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the administration of the program for that fiscal year. The report shall include the following:

“(1) The military applications of the research, technology, or prototypes for which prizes were awarded.

“(2) The total amount of the prizes awarded.

“(3) The methods used for solicitation and evaluation of submissions, together with an assessment of the effectiveness of those methods.”

Subsec. (f). Pub. L. 109-364, §212(b), substituted “2010” for “2007”.

2003—Subsec. (e). Pub. L. 108-136 inserted “during which one or more prizes are awarded under the program under subsection (a)” after “each fiscal year” in introductory provisions.

2002—Subsec. (f). Pub. L. 107-314 substituted “September 30, 2007” for “September 30, 2003”.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 111-383 effective Jan. 1, 2011, see section 901(p) of Pub. L. 111-383, set out as a note under section 131 of this title.

§ 2374b. Repealed. Pub. L. 112-239, div. A, title X, § 1076(g)(4), Jan. 2, 2013, 126 Stat. 1955]

Section, added Pub. L. 107-314, div. A, title II, §248(c)(1), Dec. 2, 2002, 116 Stat. 2502, related to prizes for achievements in promoting science, mathematics, engineering, or technology education.

CHAPTER 140—PROCUREMENT OF COMMERCIAL ITEMS

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